Canadian Transportation Agency | Office des transports du Canada

# Canadian Transportation Agency
# Annual Report 2010-2011

Making transportation efficient and accessible for all



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Canada

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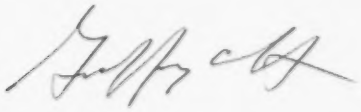
May 2011

The Honourable Denis Lebel, P.C., M.P.
Minister of Transport
Tower C – Place de Ville
330 Sparks Street
Ottawa, ON K1A 0N5

Dear Minister:

Pursuant to section 42 of the *Canada Transportation Act*, I have the honour to present to you the Annual Report of the Canadian Transportation Agency for the period 2010-11, including the Agency's assessment of the operation of the Act and any difficulties observed in its administration.

Yours sincerely,



Geoff Hare
Chair and Chief Executive Officer

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# Message from the Chair and Chief Executive Officer



The Canadian Transportation Agency is a trusted and respected regulator and tribunal. Through dispute resolution and essential economic regulation, the Agency contributes to a national transportation system that is competitive, efficient and accessible.

Providing effective and responsive services to Canadians and to federal transportation service providers is critical because, in short, transportation matters. It is fundamental to Canada's economic and social prosperity, moving goods and connecting people across our vast country.

As always, the Agency's Annual Report provides an opportunity to reflect on the successes and challenges we have faced. It also provides an assessment of the operation of the *Canada Transportation Act*, highlighting issues the Agency has experienced in administering the Act and providing views and recommendations for the consideration of Parliament on possible approaches to addressing them.

## Moving from strategy to reality

Last year, the Agency entered the final year of its first-ever triennial Strategic Plan – the culmination of three years of continuous progress and improvement in the many services we provide.

This 2008-2011 Strategic Plan set out an ambitious agenda, backed up with specific action plans and challenging, measurable performance targets. To improve its front-end service delivery, the Agency:

- Significantly increased the number of public consultations on the modernization of the Agency's regulatory regime;
- Implemented a new Governance Framework to ensure the alignment of its strategic, operational and performance goals; and
- Upgraded case management tools and practices to improve dispute resolution processing, resulting in the elimination of a backlog of disputes.

These are but a few examples. We have worked hard to translate the Plan's medium- and long-term goals from a shared vision into concrete, meaningful results. I am proud to say that the Agency's team of diligent and dedicated staff have risen to the challenge. This Annual Report provides evidence of the impressive results achieved – both last year and over the duration of the Strategic Plan.

## Staying responsive to client needs

Success in achieving these results can be measured in many different ways. But as a client-centred organization, a key measure of our success is the degree of satisfaction of our clients and stakeholders. That is why, in 2009, we established a comprehensive multi-year client satisfaction measurement program to get annual feedback on our services, relationships and performance.

This feedback has enabled us to see the Agency through the eyes of its clients, and to measure the progress we have achieved in making our services and processes clearer, simpler and more responsive to their needs.

Results from the 2009-10 and 2010-11 surveys revealed high levels of satisfaction with Agency services overall. The Agency got high marks for its professionalism, for ensuring its processes are well understood and for its commitment to providing efficient and cost-effective alternative dispute resolution processes.

The results also indicated a few key areas for improvement, such as better communicating precedent-setting decisions to parties, and continuing to build trust in the Agency's impartiality through greater transparency and through enhanced stakeholder dialogue a nd engagement.

We are committed to listening to, and acting to fulfill, the needs of our clients and stakeholders. These insights are helping us to chart the course we will take in our new three-year Strategic Plan.

## Looking ahead: The next three years

The Agency's 2011-2014 Strategic Plan will build on the foundations set – and the accomplishments realized – between 2008 and 2011, while addressing new issues and continuing to work on ongoing challenges.

I remain more than ever convinced that success can only be achieved by providing more responsive and timely services to our clients and stakeholders. To do so, the Agency must:

- Enhance its awareness of the evolving needs of travelling Canadians, as well as of the rapidly changing operating environments of the air, rail and marine transportation industries;
- Seize opportunities to leverage the Internet in order to provide e-services and re-engineer our business processes to achieve further service improvements and efficiencies; and
- Ensure that our regulatory activities and dispute resolution services are effective, fully justify the expenditure of public funds and result in the greatest possible overall economic and public benefit.

The Agency will also continue to focus on its people as a priority, since engaged, knowledgeable and highly competent employees are our greatest asset – and the critical factor in our ability to continue to provide quality services.

The Agency is ready to embrace future challenges with renewed energy and a clear sense of purpose. As we set the course for 2011-12 and launch our next Strategic Plan, we remain committed to helping Canada benefit from a fair, efficient and accessible transportation system.

I encourage you to review this Report and to take note of what the Canadian Transportation Agency has accomplished.



**Geoff Hare**
Chair and Chief Executive Officer

# About Us

"... we have always seen them as being fair... they know their business and they do a good job at being arms length and have a lot of knowledge and expertise."

Industry client

## Who we are

The Canadian Transportation Agency is an independent administrative body of the Government of Canada. It performs two key functions within the federal transportation system:

- As a **quasi-judicial tribunal**, the Agency, informally and through formal adjudication, resolves a range of commercial and consumer transportation-related disputes, including accessibility issues for persons with disabilities. It operates like a court when adjudicating disputes.
- As an **economic regulator**, the Agency makes determinations and issues authorities, licences and permits to transportation carriers under federal jurisdiction.

## Performance Target

TARGET ACHIEVED

**A tribunal respected for its fairness and balance**

The Agency prides itself on its status as a leading Canadian tribunal. In making rulings, the Agency's Members carefully consider all of the facts before them and uphold the highest standards of impartiality.

Target: 0% of discretionary rulings overturned by the Federal Court of Appeal or the Supreme Court of Canada on the basis of procedural fairness

## Our Mandate

To administer the economic regulatory provisions of Acts of Parliament affecting all modes of transport under federal jurisdiction.

## Our Mission

To assist in achieving a competitive, efficient and accessible transportation system through dispute resolution, essential economic regulation and communication in a fair, transparent and timely manner.

## Our Vision

To be a respected, leading tribunal contributing to a competitive and accessible national transportation system efficiently meeting the needs of users and service providers and the Canadian economy.

## Our Values

**Integrity.** We act with honesty, fairness and transparency.

**People.** We treat people with fairness, courtesy and respect, and foster a cooperative, rewarding working environment.

**Quality Service.** We provide the highest quality services through expertise, professionalism and responsiveness.

**Communications.** We promote the constructive and timely exchange of views and information.

**Innovation.** We commit to creative thinking as the driving force to achieve continuous improvement.

**Accountability.** We take full responsibility for our obligations and commitments.

"The Agency plays a crucial role in the national transportation system. As a trusted and responsive tribunal and regulator, we base our priorities for action on the needs of our clients and stakeholders. We then monitor our progress against clear and challenging performance targets."

Geoff Hare
Chair and CEO



For more on the Agency, its role and its vision, go to www.cta.gc.ca/eng/aboutus



For more on how the Agency works, go to www.cta.gc.ca/eng/process



For a complete listing of Agency decisions currently before the Federal Court of Appeal or the Supreme Court of Canada, go to www.cta.gc.ca/eng/courts



# Strategy to Reality:

## The 2008-2011 Strategic Plan

**Michel Leblanc**
Director, Finance, Administration and Planning

The year 2010-11 marked the end of the Agency's first-ever three-year Strategic Plan. The 2008-2011 Strategic Plan was developed with a view to maintaining and enhancing our role in the transparent, fair and efficient regulation of the federal transportation system.

One overarching objective guided the implementation of the Strategic Plan – that of upholding the Agency's long-standing reputation as a leading Canadian tribunal.

This was achieved by focussing on five main priorities:

- Effective **dispute resolution** and **economic regulation**.
- Focussing on our **people** as our greatest asset.
- Enhanced **internal and external relations** through clear and timely communications.
- A more **accessible transportation** network without undue obstacles to the mobility of persons.
- **Organizational support and responsiveness** through superior business management practices.

"Really it is just about procedure and process, predictability and fairness, and they make any regulated group happy."

Industry client



To read the Agency's 2008-2011 Strategic Plan, go to www.cta.gc.ca/eng/stratplan

"I'm Michel and transportation matters to me. My team plays a supportive role: policy advice, financial reporting, goods and services, and physical and IT security. An interesting aspect of my work is the coordination and drafting of the Strategic Plan, which lays out the actions and priorities of the Agency over the next three years."

# Reaching Out



For the 2009-10 and 2010-11 client satisfaction survey reports, go to www.cta.gc.ca/eng/surveys

"I know that the Agency is always very open and willing to listen to the concerns that we raise and every time I have been involved, whether through a submission, or just picking up the phone they have been eager to listen, to help us understand the process, and been willing to come out and meet with us. We are not wanting for more interaction; the Agency has always been there for us."

Industry client

In providing its services, the Agency is committed to enhancing its communications and dialogue with clients and stakeholders, as well as improving its ability to identify and respond to their needs.

## Obtaining feedback from clients

The Agency conducted client satisfaction surveys both in 2009-10 and 2010-11 in order to better understand its clients' needs and how its services could be improved. The results reveal that Agency clients and stakeholders have high degrees of satisfaction with its services. The Agency also got high marks for its professionalism and for ensuring its processes are well understood.

The surveys covered the following clients and stakeholders:

- Canada's main national rail, air and marine transportation service providers;
- Service providers who have been licensed or inspected by the Agency;
- Major associations representing industry, transportation users and persons with disabilities;
- Individuals who used the Agency's dispute resolution services; and
- Individuals who contacted the Agency with general inquiries.

Base-line benchmarks established based on these first surveys will now help the Agency measure its performance and continually improve its service delivery. Given the valuable feedback they provide, the Agency plans to conduct client satisfaction surveys in the coming years.

## What we are hearing

The survey results clearly demonstrate that the Agency has made improvements in meeting the targets set out in its priority for enhancing external relations. Executives from the transportation industry were generally satisfied

with the level of dialogue they have with Agency executives and staff. They recognized that ongoing dialogue, both formal and informal, helps resolve minor concerns before they evolve into larger issues.

These positive results have confirmed that the Agency's commitment to open dialogue is worthwhile. The feedback we have received also tells us that we must be more proactive than ever in seeking input, especially before making significant changes to our regulations and processes.



## Performance Target

TARGET ACHIEVED

Measures of satisfaction with Agency services related to serving the needs of users of, service providers within, and others affected by the national transportation system.

- ✓ Program to measure client satisfaction in place
- ✓ Benchmark surveys conducted in 2009-10 and 2010-11, reports released and targets set



In addition, the majority of respondents were satisfied with the clarity and accuracy of information provided by the Agency and with the fact that service was provided in the official language of their choice.

The Agency launched a fully redesigned Web site in 2009 that got very positive feedback, although there were also suggestions for further improvement. In response, the Agency will continue to review the Web site to ensure that it uses clear, plain language and that the information is easy to access.

## Key accomplishments

To further its priority on external relations, the Agency:

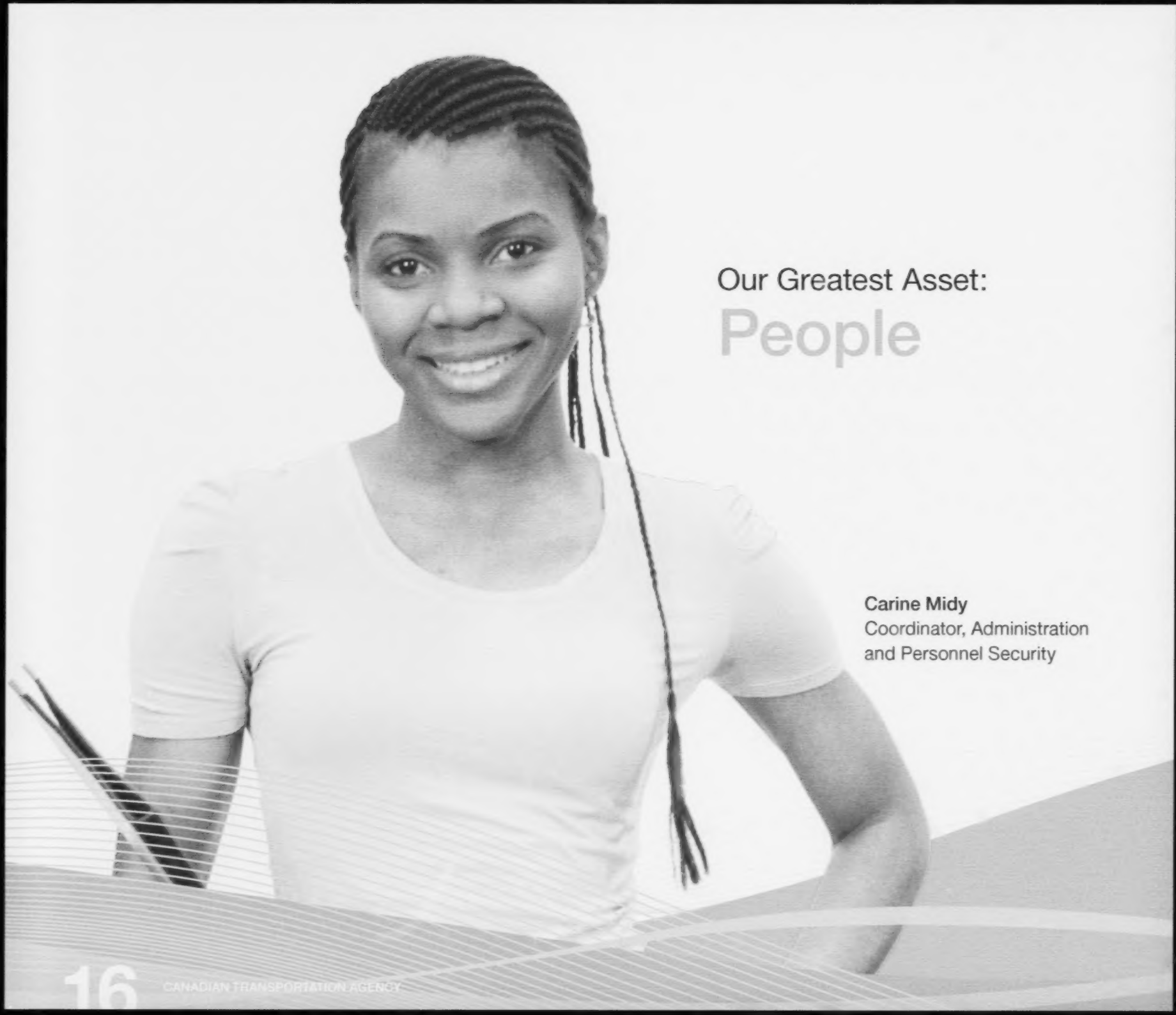
- Reported on its progress made over the past three years in meeting targets set out in the Agency's first-ever Performance Measurement Framework;
- Developed action plans to address the areas for improvement identified in the client satisfaction surveys;
- Held initial consultations to update the *Air Transportation Regulations* which cover how the Agency implements air transportation provisions of the *Canada Transportation Act*;
- Held working group sessions with the U.S. Department of Transportation to discuss matters of common interest, such as the implementation of the Montreal Convention, air carrier advertising of prices, and accessibility issues for persons with disabilities;
- Engaged in consultations as part of its efforts to modernize the Agency's regulatory regime, including the railway cost of capital methodology, interswitching rates and limited distribution tariffs; and
- Relaunched its popular publication *Moving Ahead* – formerly an annual print newsletter – in a more timely and efficient e-newsletter format.

Other key accomplishments since 2008:

- Issued publications to assist Canadians in resolving transportation-related disputes, such as *Rail Noise and Vibration Complaints: Working together towards solutions*;
- Published *Take Charge of Your Travel*, a new guide designed to help persons with disabilities plan their trips from start to finish; and
- Became one of the first federal government bodies to make publications available for download in DAISY format – a digital talking book that makes print publications accessible to persons who are blind or have a visual impairment.

"They are very cooperative on meeting, and they are honest and open and you get real answers to real questions. When you ask a question you hear the truth. You might not like what you hear but it is the truth. Clearly they care."

Industry client



# Our Greatest Asset:
# People

**Carine Midy**
Coordinator, Administration
and Personnel Security

## Employees

The Agency employs more than 250 people with a variety of backgrounds and skill sets. Our workforce is made up of economists, engineers, lawyers, financial analysts, human resource and communications specialists, mediators, as well as case management, licensing and enforcement officers, and other support staff. Because the Agency is a relatively small entity within the public service, we work closely together – creating a tightly knit group that understands the far reaching effects of its work within and outside the Agency.

What's more, there is a strong sense of unity as diverse talents are often assembled into multi-disciplinary teams to tackle complex transportation matters. This ability to work together greatly contributes to the Agency's effectiveness by establishing a collaborative and collegial atmosphere where each employee's contribution is sought and valued.

## Members

The Agency's five full-time Members are appointed by the Governor in Council. The Members are the quasi-judicial decision-makers within the Agency, and are responsible for rendering decisions and orders related to complaints or applications, as well as addressing other issues affecting Canada's national transportation system.

In 2010-11, the Agency issued 2,253 rulings, virtually all of which required the involvement of Members of the Agency.

These rulings included:

| | |
|---|---|
| 613 | orders; |
| 518 | decisions; |
| 894 | permits; |
| 23 | final letter decisions; and |
| 205 | interim decisions. |

"I'm Carine and transportation matters to me. By helping with the day-to-day operations of the Agency I feel that I am providing my colleagues – all 260 of them – with a safe and efficient work environment. And when we have the best possible support internally, we can provide the best service to Canadians."

"I cannot begin to express to you how grateful and fortunate we were to have you assigned to our case. You were very helpful and I always knew you were on top of things. It's a pleasure to work with people who know the meaning of efficiency. Again, we cannot thank you enough for your assistance in resolving our case. I was relieved to know that the Agency exists so that people can turn somewhere for dispute resolution."

J.L.L.

Air travel complaints client



## Maintaining our expertise and enhancing our internal relations

Any successful organization – in the public or private sector – well understands that its employees are its greatest asset.

At the outset of its 2008-2011 Strategic Plan, the Agency recognized that it faced the same demographic challenge confronting all government departments: the retirement of a significant portion of its staff. To meet this challenge, the Agency has made significant efforts to attract, motivate, and retain highly skilled, talented individuals.

Through initiatives like our succession planning process and employee-led working groups, the Agency intends to be seen as an employer of choice,

known for offering a dynamic and positive work environment, challenging work, and career development opportunities.

## What we are hearing

Overall, clients and stakeholders surveyed over the past two years were positive in their assessment of Agency staff they interact with on a day-to-day basis.

Agency staff are perceived to be approachable, courteous, helpful, and flexible. About two-thirds of respondents indicated that Agency staff responded quickly to their request, that they were treated fairly, and that they were offered a variety of means to contact staff. Regulated stakeholders almost always characterized their interactions with Agency staff as being productive and positive.

Some stakeholders indicated that they are concerned about staff turnover and the potential for a loss of institutional memory. Ensuring that corporate knowledge and expertise are preserved in the Agency has been – and will continue to be – a key priority.

## What our staff are saying

In 2008-09, employees responded to the Public Service Employee Survey and the Agency's own internal survey and consultations.

Overall, Agency staff felt that they have a good work-life balance and that the Agency fosters a supportive learning environment. The results were encouraging; however, a number of areas for improvement were identified, in particular in the areas of internal communications and human resources practices.

An Employee Working Group was formed by employees to engage all Agency staff in a consultative process to identify and recommend solutions. The Group made recommendations on four key action areas: recruitment and

"Good, smart people who do their best to balance private and public interests."

Industry client

### Performance Target

TARGET ACHIEVED

**Recruitment strategy implemented**

- ✓ Agency Student Employment Program in place
- ✓ Pools of qualified candidates created through selection processes and used to fill vacancies
- ✓ Targeted recruitment mechanisms developed for specific types of positions

## Performance Target

TARGET ACHIEVED

**Succession plan in place**

- Gap analysis and identification of key positions and Agency vulnerabilities in place
- Ensured that recruitment strategy and knowledge management activities addressed vulnerabilities

## Performance Target

TARGET ACHIEVED

**Knowledge management skills strategy implemented**

- Generic competencies have been updated for all positions
- Pilot projects on knowledge management conducted to identify best practices

onboarding, feedback and career development, trust, and conflict resolution. The recommendations were approved by the Agency's Executive Committee and several have already been implemented; the rest are helping to shape the Agency's new 2011-2014 Strategic Plan and operational plans.

### Key accomplishments

The Agency has taken the following actions in support of its priority on people and internal relations:

- Implemented a "communications and dialogue wheel" – a tool to foster more effective internal communications and dialogue by identifying possible channels, activities and the roles and responsibilities of different players;
- Ensured that all employees share a common performance objective to establish and maintain a respectful workplace, and attend related training;
- Launched a tailor-made training program for case officers and other staff involved in dispute resolution processes to enhance their knowledge and skills related to processing of cases and dispute resolution in general;
- Developed learning roadmaps for each employee level to be incorporated into the spring 2011 Employee Performance Review process and delivered courses for managers that link directly to their learning roadmaps;
- Continued to implement knowledge transfer projects, student recruitment initiatives and developmental opportunities for staff;
- Expanded the Agency's investment in employee learning and training; and
- Launched a fully redesigned intranet site, based on staff input, to give Agency staff access to work tools and key information on training, job opportunities, health and safety, and much more.



Some stakeholders indicated that they are concerned about staff turnover and the potential for a loss of institutional memory. Ensuring that corporate knowledge and expertise are preserved in the Agency has been – and will continue to be – a key priority.

# Improving Our Organizational Support and Responsiveness

## Performance Targets

TARGETS ACHIEVED

- Operational plans integrate multi-year budgeting and planning into resource management allocations
- New governance and committee structure in place to guide and oversee strategic priorities implementation and operational delivery
- Full implementation of a Performance Measurement Framework and ongoing reporting on performance measures

The Agency recognizes that not only do we need to have the right people in the right place – they must also be doing the right work at the right time.

In order to be a well-managed, innovative organization that anticipates and responds effectively to change, the Agency adopted systemic business management practices.

A strong governance model, effective management principles and sound processes mean that the Agency's focus, efforts and resources are fully aligned and support its strategic, operational and performance objectives.

## Measuring our performance

The Agency strives for high performance in everything it does. Three years ago, along with the 2008-2011 Strategic Plan, we released a results-focussed Performance Measurement Framework to track our progress towards achieving our performance targets.

The Framework established performance measures, benchmarks and targets for the level of service delivery that we aimed to achieve for our core business lines. These benchmarks were used to track how closely objectives, results and specific targets were being met and to support short- and long-term decision-making.

The Agency will build on these successes by establishing even more challenging performance benchmarks for targets we were able to achieve, while focussing with renewed determination on the targets that presented challenges over the last three years.

By setting out a clear course for 2008-11, the Agency was able to measure many of its contributions to an efficient and accessible transportation system for the benefit of the entire country, its economy and all of its citizens.

## Key accomplishments

In addition, to improve its organizational support and responsiveness, the Agency:

- Created an internal case monitoring committee to identify ways to streamline the Agency's processes, monitor the status of all ongoing Agency cases, and address potential efficiency- and consistency-related issues before they arise;
- Developed an intranet-based case management toolkit for employees consisting of clear procedures, templates, tools and checklists to help Agency staff process cases with increased efficiency; and
- Commenced a review of the Agency's formal procedures and began developing new guidelines for determinations and oral hearings, in order to provide clear, focussed and consistent procedures that are customized for the different types of dispute and determinations processes.

"I think it [the mediation and dispute resolution] saves us both work... it is a better use of resources and it has been successful. And I really appreciate the resources they have put into it... they really have given us their top people."

Industry client

### Other key accomplishments since 2008:

- Addressed a number of dispute case processing issues and implemented process improvements and new practices that promote increased productivity, efficiency and consistent quality; and
- Adopted a revised Case Management Policy Suite that will support better tracking of the progress of case files, increasing work efficiency and promoting best practices.

### Performance Target

TARGET ACHIEVED

**Integrated Risk Management Framework Developed**

- ✓ Risk Management and Legal Risk Management Framework in place
- ✓ Updated annually the Agency's Corporate Risk Profile



## How We Work At

# Resolving Disputes

**Mariko Nagata**
Director, Alternative Dispute Resolution Services

# The Agency's Role in Dispute Resolution

Each year, hundreds of transportation users and service providers turn to the Agency looking for ways to resolve their disputes about:

- transportation services;
- fares, rates and charges;
- terms and conditions of carriage; and
- accessibility.

There are a number of dispute resolution services, ranging from facilitation to mediation, final offer arbitration, and formal adjudication.

The Agency consistently strives to ensure that its services are effective, responsive, fair and transparent, and that it weighs the interests of all parties in the national transportation system in a balanced manner.



## Key accomplishments

To improve the effectiveness and responsiveness of its dispute resolution services, the Agency:

- Resolved approximately 87% of all disputes informally, either through facilitation or mediation, thereby providing a fast track avenue for resolution; and

"I'm Mariko and transportation matters to me. I lead a team of mediators who help resolve disputes across Canada. People come to us because they're looking for a quicker, simpler way to work through issues. As mediators, we provide them with a place to talk, face-to-face – a place to build their own solutions. And those are solutions that last."



For more on the Agency's dispute resolution processes, go to www.cta.gc.ca/eng/disputes



For detailed statistics on dispute resolution, go to www.cta.gc.ca/eng/statistics



To learn more about the Agency's formal decision-making process, go to www.cta.gc.ca/eng/decisions

"[My case officer] was the first person to actually read my letters or hear me. She always kept me up to date both verbally and in writing and she dealt with my file with great speed and professionalism. You are fortunate to have her on your team."

Jill Allen
Air travel complaints client

- Published new guides to help those involved in environmental assessments of rail infrastructure projects.

## Striving for efficiency in dispute resolution

Over the course of its first three-year Strategic Plan, the Agency has learned much from its efforts to meet its performance targets relating to dispute resolution.

In 2008, the Agency set a target to resolve 65% of disputes in its formal adjudication process within 120 days. In the past three years, respectively, only 56%, 43% and 62% of formal cases were completed in 120 days.

### Other key accomplishments since 2008:

- Expanded its alternative dispute resolution services and created an Alternative Dispute Resolution Services Directorate;
- Initiated a number of consultations with stakeholders and clients in order to better serve Canadian consumers and transportation providers; and
- Released *Guidelines for the Resolution of Complaints Concerning Railway Noise and Vibration*, following extensive consultations.

Meeting the 120-day target for the resolution of formally adjudicated cases continues to be a challenge due, in large part, to the increasing proportion of formal cases that are more complex. Less complex cases are now being settled efficiently and effectively through the Agency's informal facilitation and mediation services, while this 65% target was set on the assumption that the majority of adjudicated cases would continue to be of a similar, medium level of complexity.

The complexity of formally adjudicated cases has increased substantially as a result of the issues being brought before the Agency and related procedural requirements, including extended pleadings processes and, in some cases, the need for additional research. Of the 23 adjudicated cases in 2010-11 that did not meet the performance target, 19 were complex cases.

In order to address this challenge, the Agency has introduced a number of initiatives to streamline the dispute resolution process, to achieve greater consistency in quality, and to improve the efficiency and timeliness of case resolution, such as:

- Criteria for determining the level of complexity of cases;
- Clearly defined roles and responsibilities for the panel chairs and case officers;
- A model decision framework;
- Checklists for Agency staff to use when processing cases;
- A comprehensive training program for case officers; and
- A variety of tools for staff to assist them in implementing Agency practices and policies related to the processing of cases.

Agency staff have been implementing these tools and initiatives for nearly a year. Results to date indicate that they have led to efficiencies and greater consistency in quality which will have a positive impact going forward.

The Agency resolved 472 disputes in 2010-11.

Of these,

400 were resolved through facilitation; and

11 were resolved through mediation;

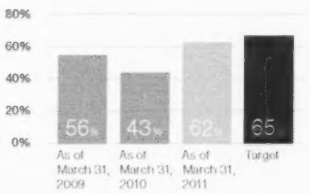
Additionally, of the 169 active cases in formal adjudication:

61 were resolved through decisions issued; and

12 were withdrawn.

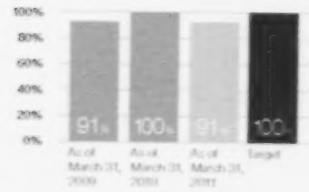
## Performance Target

65% of disputes resolved formally within 120 days



## Performance Target

100% of mediation cases resolved within 30 days




"... the mediation process was transparent, practical, efficient and cost effective."

Industry client

To assist unrepresented applicants, who are generally not familiar with, or have difficulty understanding, its dispute resolution processes, the Agency is simplifying and clarifying the procedures used in case processing and is preparing revised guidelines for dispute applicants.

The Agency will continue to assess performance and determine if other actions are needed in order to ensure that its performance targets are being achieved.

### Facilitation and mediation: A fast track for resolution

In 2010-11 over 87% of complaints brought forward by individual consumers were resolved informally, either through facilitation or mediation. Not only are acceptable solutions found relatively quickly, but both parties usually wind up saving considerable time and expense by resolving the issue without resorting to the Agency's formal adjudicated process – making this informal approach a true win-win situation.

The majority of complaints before the Agency are resolved by facilitation. In the past year, there were 400 facilitated disputes – of these, nine related to rail, 16 related to accessibility, one related to marine and 374 related to air.

The Agency has seen a rise in the number of inquiries and requests for mediation services. In part, this is because the Canadian Pacific Railway Company (CP) and the Canadian National Railway Company (CN) have actively promoted the Agency's dispute resolution services.

Mediated cases before the Agency are becoming increasingly complex because of the involvement of multiple parties and the need to address various technical issues. The one mediated case that did not meet the Agency's 30-day target was a complex level of service dispute. It required numerous requests for additional documents to complete the file, and extensive work with the parties was needed to reconcile discrepancies in the documents. In the end, the case was successfully resolved.

## What we are hearing

The Agency has actively promoted alternative dispute resolution approaches over the past few years, and was encouraged to learn that respondents to its client satisfaction surveys enthusiastically embraced such approaches.

Transportation service providers and other stakeholders felt that the Agency was doing an effective job of facilitating the resolution of disputes. Mediation earned even higher praise from respondents, and the Agency was commended for the commitment of staff resources it has allocated to this process. Alternative dispute resolution is seen to be successful in part because of the Agency's commitment to it.

In general, two-thirds of clients using the Agency's dispute resolution services indicated that the Agency clearly explained what it could and could not do and that they were informed of everything that was required of them. The client satisfaction survey results point to specific issues with respect to the time taken to acknowledge and resolve complaints that need to be addressed. The Agency has taken steps to improve its responsiveness in dispute resolution and has made it a key priority going forward.

In 2010-11, 37 cases were referred to mediation:

- 11 cases were successfully resolved (including 1 settled during pre-mediation);
  - Of these,
    - 6 related to rail disputes; and
    - 5 related to accessibility disputes.
- 14 cases were declined by the respondent, withdrawn or unresolved; and
- 12 cases are currently in progress.

# Resolving Accessibility Disputes

In 2010-11, the Agency resolved 28 accessibility dispute cases.

Of these,

| | |
|---|---|
| 16 | were resolved through facilitation; |
| 5 | were resolved through mediation; and |
| 7 | were resolved through adjudication. |

In addition,

| | |
|---|---|
| 15 | were withdrawn or closed due to lack of response from applicants; and |
| 22 | were still in progress at year end. |

The Agency has a responsibility to ensure that any undue obstacles to the mobility of persons with disabilities are removed from federally-regulated air, rail, and extra-provincial ferry and bus transportation.

To ensure a more accessible transportation network, the Agency removes undue obstacles in two ways:

- on a case-by-case basis, by resolving individual complaints; and
- on a systemic basis, by developing regulations, codes of practice and standards to ensure accessibility.

## What we are hearing

The Agency has handled and continues to deal with several complex cases, including complaints concerning air passenger allergies to scents, cats, nuts and peanuts. The client satisfaction survey results also indicate that accommodation for persons with disabilities is a critical issue for the airline industry at present. One concern raised by the airlines is that, because the Agency resolves individual complaints on a case-by-case basis, there is a cumulative financial impact on the industry that is not adequately taken into account. On the other hand, advocates for persons with disabilities applaud recent Agency decisions and question carriers' reluctance to embrace accommodation, which they view as a human right.

In its role as an independent tribunal, the Agency is committed to operating with fairness and impartiality. The dispute resolution process is designed to allow all parties equal opportunity to present their cases. The Agency makes decisions



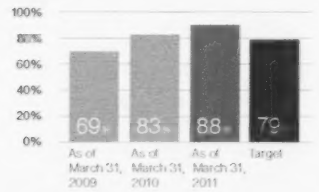
> The Agency has the unique specialized expertise to balance the human rights of those with disabilities against the practical realities of the federal transportation system.

Federal Court of Canada

## Performance Target

**TARGET ACHIEVED**

79% of accessible transportation disputes resolved informally within 30 days




based on the evidence provided, and in complex cases, may also require research, seek input from experts, or undertake consultations.

The Agency also works with industry and the community of persons with disabilities to develop voluntary codes of practice and standards to improve accessibility and reduce the number of complaints stemming from undue obstacles.

In addition, the Agency monitors and publicly reports on the compliance of federally-regulated air carriers, rail passenger service providers, ferry service providers and terminals with the voluntary codes and accessibility regulations. Compliance results to date have been very high.

## Key accomplishments

To contribute to an accessible transportation network, the Agency:

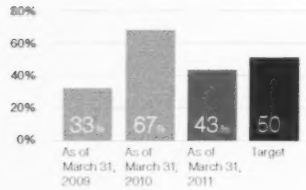
- Made significant progress in resolving complaints related to the appropriate accommodation of air travellers who are persons with disabilities due to their allergies;
- Began work on comprehensive new complaint guidelines to educate the transportation industry and the community of persons with disabilities about their rights and responsibilities; and
- Released two compliance reports revealing that:
  - The majority of federally-regulated transportation terminals were compliant with specific provisions of the Agency's *Code of Practice: Passenger Terminal Accessibility*; and
  - Canada's six largest airlines have made significant progress in complying with two implementation guides on space for service dogs and tactile row markers onboard large aircraft.

**Other key accomplishments since 2008:**

- Developed a new compliance monitoring framework designed to more effectively assess the extent to which transportation service providers are abiding by existing accessibility Codes of Practice and regulations;
- Released guides to assist air carriers in implementing provisions of the *Code of Practice: Aircraft Accessibility for Persons with Disabilities* related to space for service dogs and tactile row markers; and
- Issued a final Decision on 26 complaints regarding obstacles to the mobility of persons requiring medical oxygen to travel by air.

## Performance Target

50% of accessible transportation disputes resolved formally within 120 days




## Accessibility Progress Report

To resolve accessibility disputes, the Agency applies human rights principles. The existence of a disability is not always apparent; in such cases the Agency must first determine whether the applicant is a person with a disability.

In 2010-11, the Agency resolved 21 accessibility disputes informally, and an additional seven cases were resolved through the Agency's formal process. Two of the facilitated cases involved multiple complex issues, as well as

For statistics on disputes involving the mobility of persons with disabilities, go to www.cta.gc.ca/eng/statistics



parties who were unavailable for significant periods of time. These two cases were not resolved within the Agency's 30-day target.

Of the seven adjudicated cases, four were very complex. For the first time, the Agency addressed a case in which a traveller has multiple chemical sensitivities and requires medical oxygen to travel by air. An expert was engaged to submit evidence on this issue, which was reviewed during the Agency's decision-making process.

Many accessibility disputes are also filed by unrepresented parties who may not be familiar with the process of a tribunal such as the Agency. The Agency is preparing revised guidelines for parties to accessibility disputes in order to help them better understand the Agency's processes and their rights and responsibilities.

## Accessible transportation: A question of jurisdiction

In a 2010 ruling, the Federal Court of Canada further clarified the role and jurisdiction of the Agency where accessibility is concerned. The Court set aside a Decision by the Human Rights Tribunal of Canada in favour of a Decision that had already been rendered in the same case by the Agency.

**Steven Winters**
Policy Analyst

The Federal Court agreed with the Agency in its assertion that all disability-related cases regarding the use of the federally-regulated transportation network are under its jurisdiction. In upholding the Agency's original Decision, the Court stated that "the Agency has the unique specialized expertise to balance the human rights of those with disabilities against the practical realities of the federal transportation system."

The Canadian Human Rights Commission has filed an appeal with the Federal Court of Appeal, relating directly to the interpretation of the Agency's human rights mandate under the *Canada Transportation Act*. The Agency is participating in this appeal; a date for the hearing has not yet been set.



## Peanuts and nuts in aircraft cabins

An allergy is not automatically considered to be a disability for the purposes of the *Canada Transportation Act*. However, the Agency has determined that a person with an allergy may be found to be a person with a disability if the allergy sufficiently limits the person's access to the federal transportation network.

In a January 2010 Decision, the Agency ruled that Air Canada's lack of a formal policy to accommodate the needs of persons with allergies to peanuts or nuts constitutes an obstacle to the mobility of those whose allergy to peanuts or nuts results in a disability.

"I'm Steven and transportation matters to me. I work on regulations and voluntary standards – these help ensure that Canadians with disabilities have equal access to the country's transportation network. We monitor industry compliance and the results have been positive."

"I wish to express my gratitude for all the assistance your Agency has provided to our family in ensuring that appropriate seating arrangements were made for the return flight on Christmas day for my daughter and her service dog. The simple solution that I suggested to the [airline] representative was rejected outright and I am happy that in less than 24 hours you were able to convince them otherwise. I appreciate this service the Government of Canada provides for disabled Canadians, and in particular the thoughtful staff that worked on this complaint for us."

Kim Villella
Accessible complaints client

In October 2010, the Agency determined that the appropriate accommodation for these travellers, when at least 48 hours advance notice is provided to Air Canada, is as follows:

- Air Canada will create a buffer zone for the passenger, in line with specific parameters set out in the Decision;
- Only peanut- and nut-free foods will be served by Air Canada within the buffer zone as part of its onboard snack or meal service; and
- Personnel will brief passengers within the buffer zone that they can only eat foods that are peanut- and nut-free.

## Other food allergies and environmental sensitivities

In May 2010, for the first time, the Agency ruled in the case of a woman with an allergy to seafood and fish that is triggered upon ingestion or inhalation of steam from seafood being cooked.

When it receives an accessibility complaint, the Agency must determine on a case-by-case basis whether an individual is a person with a disability for the purposes of the *Canada Transportation Act*. In some cases this will be obvious; in others, the individual must prove that they have an impairment, as well as provide fact-based evidence of the presence of an activity limitation and a participation restriction in accessing the federal transportation network.

In this case, the Agency found that the woman did not provide sufficient evidence to demonstrate that, for the purposes of the Act, she is a person with a disability due to her allergy to seafood steam. As a result, the Agency did not address whether she encountered an obstacle to her mobility and the case did not proceed.

In June 2010, in its first Decision on multiple chemical sensitivities, the Agency determined that Air Canada's refusal to provide the complainant with its onboard medical oxygen service constituted an undue obstacle to her mobility. The Agency required Air Canada to allow the complainant to use medical oxygen onboard its aircraft by whatever means available and as she chooses.

For updates on the Agency's allergy cases, go to www.cta.gc.ca/eng/allergy-cases

For more on resolving accessibility disputes, go to www.cta.gc.ca/eng/access-disputes

## Cats in aircraft cabins

Following Air Canada's reintroduction in June 2009 of a policy to accept pets – such as cats and dogs – for carriage in aircraft cabins, the Agency received several cat allergy complaints.

After examining evidence received from the complainants as well as Air Canada, Air Canada Jazz and WestJet, the Agency found that three complainants were in effect persons with disabilities for the purposes of the Act, to the extent that the air carriers' policies on the carriage of cats in aircraft cabins impact their ability to travel by air.

The Agency has gathered further evidence from the parties involved and has consulted with organizations and individuals who have demonstrated a particular interest in the issue.

In spring 2011, the Agency will issue a decision regarding the appropriate accommodation to be provided by these three air carriers for travellers with cat allergies.





# Resolving Air Travel Disputes

In the past year, air passenger rights and the provision of timely and quality service by air carriers have gained attention not only in Canada, but also in other parts of the world. For example, several countries have adopted various forms of regulations and measures to protect air passenger rights.

The Canadian air industry, in part through the voluntary Flight Rights Canada initiative, has made progress in recognizing air passenger rights related to delayed or cancelled flights, loss or damage to baggage, tarmac delays and other problems associated with air travel. However, in some instances problems persist, resulting in complaints to the Agency.

The Agency has a mandate to address a broad range of consumer protection issues related to air travel, including baggage, flight disruptions, tickets and reservations, denial to board, refusal to transport, passenger fares and charges, cargo, and carrier-operated loyalty programs.

All complaints that the Agency can deal with are assessed against the air carrier's tariff (policy) as well as Canadian transportation law and applicable international conventions.

Where it appears a carrier has not met its obligations, Agency staff will approach the carrier and informally attempt to facilitate a resolution of the complaint. The vast majority of complaints are resolved in this manner.

The Agency does not have jurisdiction over issues related to safety, and generally refers these complaints to Transport Canada. The Agency also does not have the mandate to deal with complaints involving the quality of air carrier services, such as the attitude of airline staff: such issues are the sole responsibility of airline management.

The Agency is, however, required by legislation to report on the number and nature of all air travel complaints received.

In 2010-11, the Agency received a total of 527 air travel complaints, 508 for informal facilitation and 19 for formal adjudication. It also began the year with a carry-over caseload of 173 complaints which had not been resolved in the previous year, bringing the Agency's total active caseload to 700 air travel complaints.

| | |
|---|---|
| 422 | of these cases were resolved through the Agency's informal resolution process. |

Of these,

| | |
|---|---|
| 27 | were determined to be outside the Agency's mandate; |
| 3 | were determined to be about carriers which had ceased operations; |
| 17 | were withdrawn or dismissed; |
| 374 | were settled through facilitation; |
| 1 | was referred to the Agency's formal adjudication process; and |
| 49 | additional cases were still undergoing facilitation at year end. |

In addition, 190 complaints submitted to Agency staff without first being brought up with the carrier were referred for resolution between the complainant and the carrier.

Of these,

| | |
|---|---|
| 138 | cases were resolved between the complainant and carrier; |
| 39 | cases were not resolved between complainant and carrier; and |
| 13 | cases referred to the carriers by Agency staff were still being reviewed by the carrier at year end. |

| | |
|---|---|
| 22 | air travel disputes were resolved through formal adjudication. |

Of these,

| | |
|---|---|
| 10 | related to allegations that a carrier had failed to respect its tariff; |
| 2 | related to allegations that the provisions of a carrier's tariff were unreasonable; |
| 1 | related to allegations of unreasonable domestic airline pricing; |
| 1 | related to allegations that a carrier failed to provide adequate notice of a discontinuance or reduction of domestic service; and |
| 8 | related to other topics |

In addition,

| | |
|---|---|
| 6 | air travel disputes were withdrawn or dismissed from the Agency's formal adjudication process; and |
| 11 | cases were still in formal adjudication at year end. |

For more on resolving air disputes, go to www.cta.gc.ca/eng/air-disputes

"Many thanks for your time [looking] into this matter. An honest assessment of the situation was what I was looking for. As a general comment, I would like to say that the Agency does a very good job of keeping its clients informed of developments. Management and staff should be commended for this."

J. Ketchum
Air travel complaints client

"I could not be happier with the outcome of this case. I definitely think that the successful results were due to your perseverance and hard work. Thank you for not treating this matter lightly and for investing your time and energy into representing my case."

C. B.
Air travel complaints client

## Trends in air travel disputes monitored through the facilitation process

In the last year, there has continued to be an overall decline in the number of complaints received by the Agency.

Some of the decrease may be due to fewer people travelling in recessionary times, but the most important factor is likely the major changes the Agency has made to the way it handles complaints.

For example, over the past few years, the Agency has actively used communications and education initiatives in order to encourage passengers and carriers to work together first to find their own solutions before coming to the Agency.

The Agency has also used its Web site and other targeted materials to clearly spell out its processes, issues it can and cannot deal with, and what outcomes can be realistically expected.

This trend might also point to the success of improved customer service, greater consistency in the application of tariff provisions by air carrier staff and efforts to resolve issues when they first arise.

### *Categories of complaints*

Quality of service was the most common issue raised in complaints received for facilitation in 2010-11, even though it is outside the Agency's mandate to resolve complaints about such matters. This issue was cited 233 times.

The second most common type of issue, flight disruptions, was cited 158 times.

Coming in a close third, having been cited 148 times, were baggage-related concerns, such as delayed, lost or damaged baggage.

*Canadian air carriers*

Most of the complaints in the facilitation process were about Canada's major carriers, with smaller carriers accounting for 13 per cent of all complaints. Specifically, in the past year, there were 219 complaints about 11 different Canadian carriers, compared with 235 complaints about the same number of carriers in 2009-10 and 448 complaints about eight carriers in 2008-09.

Overall, in 2010-11, there were fewer complaints about major air carriers than in the previous year. Notably, the number of complaints about Jazz fell from 22 to 16 last year, while Air Canada's numbers fell from 139 to 135. WestJet remained at 11 complaints. Only in the case of Air Transat were there slightly more (i.e., four) complaints than in the previous year.

In addition, the number of complaints about Sunwing decreased from 20 in 2009-10 to 16 in 2010-11.

*Foreign air carriers*

There was an increase in the number of complaints about U.S. carriers – from 21 in 2009-10 to 29 in 2010-11. This is due in part to the increase in the number of complaints about United Airlines, which rose from four to eight, and Continental, about which four complaints were received as compared to two last year.

In contrast, the number of complaints about European Union air carriers dropped from 48 in 2009-10 to 41 in 2010-11. This can be attributed in part to the fact that there were fewer EU air carriers subject to complaints – six in 2010-11, compared to 11 in 2009-10. Of those six, four had fewer or the same number of complaints. Only in the cases of Thomas Cook Airlines Limited and Lufthansa were there more complaints in 2010-11 than in 2009-10.



For statistics on air travel complaints, go to www.cta.gc.ca/eng/statistics

"My wife and I would like to thank you sincerely for pursuing this matter on our behalf and we realize that it was only through your intervention that I received a reasonable settlement for the damages sustained. Although our claim was perhaps small by comparison, you treated us with respect and professionalism and took the time and effort to keep us fully informed at all times. Once again, it was a pleasure having you handle our claim and we are indeed grateful."

John & Sylvia Hopkins
Air travel complaints clients

The number of complaints about all other foreign carriers also fell from 67 in 2009-10 to 49 in 2010-11. Again, fewer foreign (non-EU) air carriers were subject to complaints – 21 in 2010-11, compared to 26 in 2009-10.

## Progress report on air disputes resolved through adjudication

In 2010-11, 22 cases were resolved through the Agency's formal process, eight of which were very complex. These involved specific tariff-related issues, required in-depth review, and in many cases were precedent-setting.

As was the case in other areas under Agency jurisdiction, many formal air disputes were filed by unrepresented parties. Additional time was required to gather the information the Agency needed to clarify the scope of the complaint and the remedy being sought, and to issue a ruling.

In several cases, multiple and novel issues were raised which required several rounds of pleadings. Interim decisions were issued before the final ruling to give the parties a better opportunity to address the issues identified by the Agency in the proceedings.

In addition, in some instances, Agency jurisdiction needed to be clarified and/or determined. The Agency conducts in-depth research into other countries, their conventions and their issues related to transportation, in order to inform its decisions.

In an effort to achieve more timely resolution of disputes, including those specifically related to air travel, the Agency is undertaking a review of its formal,

quasi-judicial procedures, its guidance materials and its publications, to make them clearer and easier to understand.

## Baggage liability of Canadian airlines

In 2010-11, the Agency handled several cases dealing with the baggage liability policies of Canadian airlines. In one Decision, following a consumer complaint about air travel in Canada, the Agency found that WestJet's limit of liability was too low. The Agency ordered WestJet to propose a higher limit, allowing passengers to declare excess value for a reasonable extra fee. The Agency also advised WestJet that if its proposal for a new, higher limit of liability was unreasonable, the Agency would direct the airline to use the same limit required under the Montreal Convention, the 1999 treaty governing international flights.

In November 2010, after receiving WestJet's proposal, the Agency ordered the carrier to raise its limit of liability to levels specified in the Montreal Convention (approximately $1,800). The case was precedent-setting as it involved further application of principles of the Montreal Convention to domestic travel.



The Agency made significant progress in reducing the backlog of air travel complaints, decreasing the carry-over from one year to the next by 11 per cent. At the close of 2010, 173 cases were carried over, compared to just 73 cases at the close of 2011.

# Resolving Rail Disputes



Part of the Agency's mandate is to help resolve disputes between railway companies and other parties, or between railway companies.

The Agency investigates complaints and applications on the following topics:

- rail noise and vibration;
- railway crossings;
- transfer and discontinuance of railway lines;
- interswitching;
- running rights and joint track usage;
- level of service;
- public passenger service; and
- incidental charges, such as demurrage.

In most cases, railway companies and other parties can, and usually do, resolve disputes by negotiating agreements themselves. When negotiations break down, the Agency can be asked by one or both parties to assist, through facilitation or mediation, or to deal with a complaint through its formal adjudicative process.

An additional resolution mechanism is final offer arbitration, used to settle rate and service disputes between a shipper and a carrier. Final offer arbitration is administered by the Agency and conducted by an independent arbitrator, who will select either the final offer of the shipper or the carrier. In 2010-11, the Agency received one final offer arbitration request, compared to two the year before.

For more information on resolving rail-related disputes, go to www.cta.gc.ca/eng/rail-disputes

## Progress report on rail transportation

The Agency received a mandate from Parliament in 2007 to resolve disputes relating to railway noise and vibration. The Agency has since identified and addressed gaps in its expertise in this very specialized and technical area.

Based on the advice of the Agency's Rail Noise and Vibration Technical Advisory Committee, a technical study was also commissioned to identify rail noise measurement methodologies and standards. Once finalized, it will be posted on the Agency's Web site and will help in the assessment of the level and impacts of railway noise.

Railway noise and vibration complaints present some specific challenges for the Agency, as they are usually filed by multiple parties or individuals representing community interest groups and often the complainants are not familiar with the Agency's formal quasi-judicial process.

The Agency is committed to using innovative, facilitative approaches to resolve disputes and finds these types of approaches provide sustainable solutions when parties are working together to develop their own solutions. For example, the Agency found that appointing an inquiry officer to meet with both sides in a dispute and report back to the Agency panel was a highly effective way to achieve a timely resolution.

## First collaboration, then adjudication

In 2008, the Agency received a complaint from the Quayside Community Board (QCB) related to noise and vibrations from the operations of four railways at the New Westminster Yard in New Westminster, B.C.

Following successful mediation, the parties arrived at a settlement; however, in April 2010, the QCB filed a second complaint stating that the mediated solution had failed. The QCB asked the Agency to issue a guideline restricting operations in the rail yard between certain hours.

Three railways – the Canadian National Railway Company (CN), BNSF Railway Company and Southern Railway of British Columbia – responded that the

In 2010-11, the Agency resolved 26 rail dispute cases.

Of these,

| | |
|---|---|
| 9 | were resolved through facilitation; |
| 6 | were resolved through mediation; and |
| 11 | were resolved through formal adjudication. |

In addition,

| | |
|---|---|
| 4 | disputes were withdrawn; and |
| 12 | cases are currently in progress. |

## Performance Target

TARGET ACHIEVED

100% compliance with prescribed mitigation conditions to reduce environmental, economic and social impacts of railway construction projects




No applications for projects requiring mitigation conditions were received in 2008-09 or 2009-10.

Agency did not have jurisdiction because a valid agreement had already been reached. The Agency accepted the QCB's request for formal adjudication but noted that it would be put on hold should the parties, at any point, wish to reenter into a mediation process.

CN has appealed the Agency's Decision to hear the QCB's case to the Federal Court of Appeal. A hearing has yet to be scheduled.

### New Guides to Environmental Assessments

In June 2010, the Agency released new guides for environmental assessments of rail infrastructure projects. They include the one-of-a-kind *Environmental Self-Assessment Handbook for Rail Infrastructure Projects* and an *Environmental Assessment Scoping Document*.

The guides outline:

- filing requirements for an environmental assessment;
- other federal authorities who can become involved along with the Agency in an assessment;
- possible outcomes;
- the importance of public participation and other factors in a typical assessment; and
- information on environmental assessment scoping documents.

To see the environmental assessment guides, go to www.otc.gc.ca/eng/environmental-assessment

### Construction of rail lines

Laying new railway tracks of any length has the potential to affect the environment through which it is to run. The Agency is empowered by the *Canadian Environmental Assessment Act* to gauge the impact of new

construction on the environment, and to either issue or withhold permission to proceed based on the results of that assessment.

In 2010-11, the Agency was involved in 18 ongoing environmental assessment processes for proposed rail line construction projects, and issued one Decision giving authority to construct railway lines.

Another 47 environmental assessment processes for projects such as road and utility crossings required Agency involvement.

## Crossings

In 2010-11, the Agency processed 108 agreements filed by parties who had successfully conducted their own negotiations related to crossings. These agreements became orders of the Agency. Where no agreement could be reached, the Agency was called upon by the parties involved to assist them in reaching a fair and equitable resolution.

## Level of service: Grain loading sites

In August 2010, the Agency ruled on a complaint from a Saskatchewan agricultural producer alleging that the planned delisting of certain grain loading sites in Western Canada by CN constituted a breach of their level of service obligations under the *Canada Transportation Act*.

Although the initial complaint covered 53 grain loading sites, the Agency determined that, without additional complaints by other affected farmers, the case could only concern the impact of the delisting of the one site affecting the complainant.

The Agency found that the Act's level of service provisions do not oblige railway companies to maintain and operate all existing or requested producer car

The Agency issued 1 Decision on crossings through its formal adjudication process, and resolved a further 4 cases through facilitation and 1 through mediation.

Of these,

5 concerned private or road crossings; and

1 concerned utility crossings.



For detailed statistics on railway infrastructure and construction, go to www.cta.gc.ca/eng/statistics

"I know a few key people in the Agency I get information from and honestly I have always found staff to be very courteous and polite and to be as helpful as they can...."

Industry client

loading sites. Requiring railway companies to do so would render meaningless another provision of the Act under which sidings may be delisted – a process which CN followed for all 53 sites.

A second complaint from an agricultural producer association was dismissed because the complainant did not file information that was requested by the Agency.

## Status of limited distribution tariffs

In summer 2010, the Agency initiated consultations in order to gain a better understanding of limited distribution tariffs – a type of agreement between railway companies and shippers that is becoming more widespread but that is not provided for under the *Canada Transportation Act*. The Agency is soliciting the views of interested parties in order to gain a better understanding of the current and future use of limited distribution tariffs and the role they are playing in the marketplace, and whether they should be permitted within the existing legislative regime. The Agency has now received all submissions and is planning to issue a report on its findings in summer 2011.



The Agency received a mandate from Parliament in 2007 to resolve disputes relating to railway noise and vibration. The Agency has since identified and addressed gaps in its expertise in this very specialized and technical area.

# Resolving Marine Disputes

"... the mediation process came in here three years ago and we have exploited it to the utmost because it resolves disputes in a non-threatening way...and in the dozen or so I've been involved in they have all been successful except for one."

Industry client

Marine disputes can involve user fees at ports, charges for pilotage services, or coasting trade applications for foreign or non-duty paid ships to work in Canadian waters.

The Agency examines marine complaints on the following topics:

- disputes related to coasting trade applications;
- tariffs proposed by pilotage authorities;
- fees fixed by port authorities;
- final offer arbitration of northern resupply carrier disputes; and
- unreasonable price increases or reductions of service by a shipping conference.

## Progress report on marine transportation

In the past year, the Agency has observed an increase in the number of offers of Canadian ships for coasting trade applications.

The Agency resolved 22 marine disputes in 2010-11. One such case was a review of the dredging fees set by the Saint John Port Authority. The Agency had to resolve preliminary issues, such as the efficiency of the dredging service and its relationship in determining what constitutes a fair and reasonable fee under the *Canada Marine Act*. It was a complex case involving multiple rounds of lengthy pleadings that extended the process. The Agency determined that it had no jurisdiction to rule on this matter, and the Federal Court of Appeal dismissed an application for leave to appeal the Agency's Decision.

In another key case, the Agency issued a Decision allowing the use of a foreign vessel to conduct seismic surveys using new technology for exploration off the east coast of Canada, after determining that there was no suitable Canadian vessel available to conduct this work. This was the subject of a petition to the

Governor in Council to overturn the Agency's determination. Upon review, the Governor in Council upheld the Agency's Decision.

The Agency's mandate in marine matters is quite specific and technical. To ensure the Agency retains its expertise, a knowledge transfer initiative was completed. It involved the documentation of processes, best practices and lessons learned from significant cases.



For more information on resolving marine disputes, go to www.cta.gc.ca/eng/marine-disputes

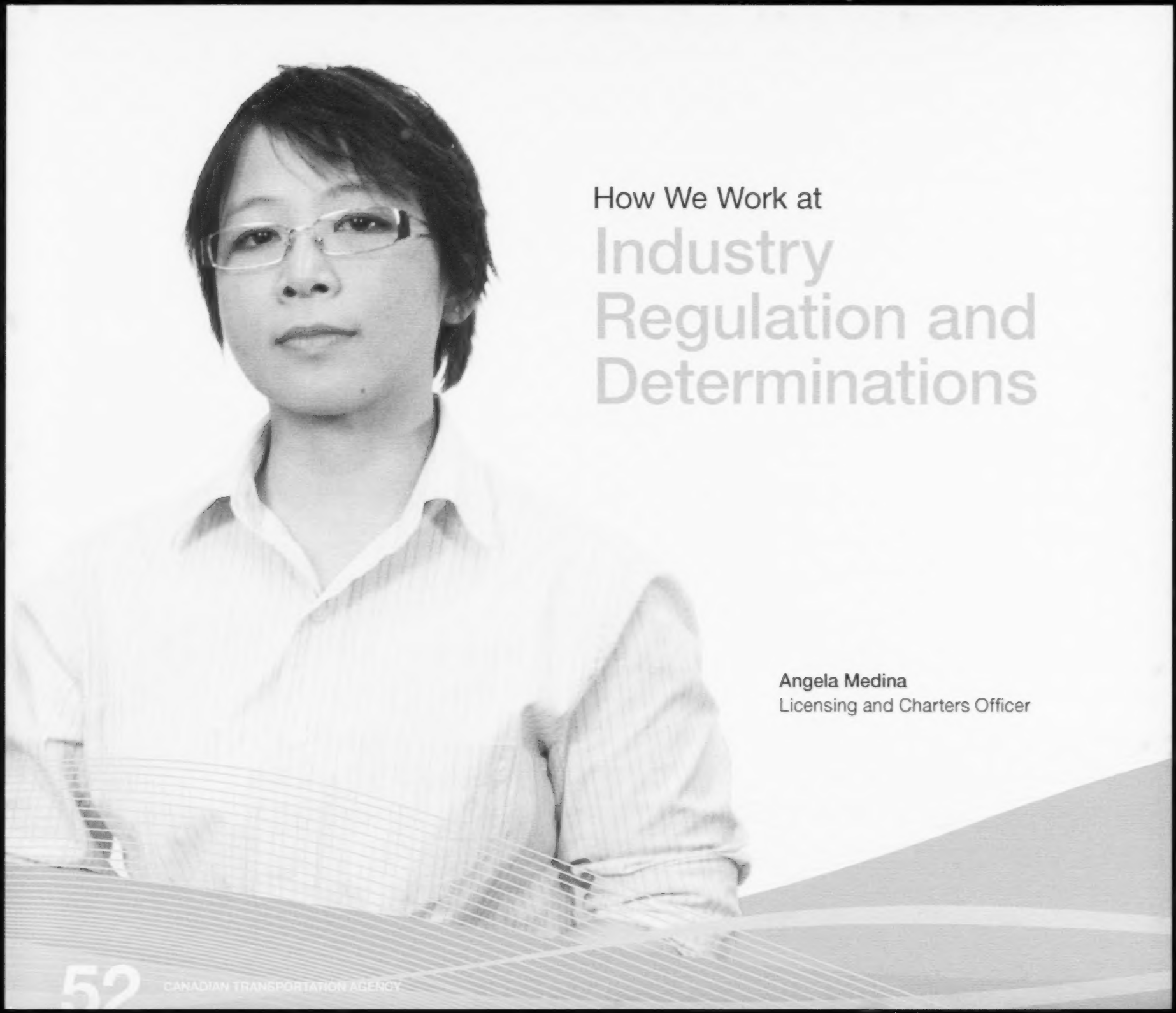
In 2010-11, the Agency resolved 22 marine disputes.

Of these,

| | |
|---|---|
| 20 | were coasting trade disputes; |
| 1 | was a port authority fee dispute; and |
| 1 | was a pilotage fee dispute, closed through facilitation. |

In addition,

| | |
|---|---|
| 1 | coasting trade case is currently in progress. |



How We Work at

# Industry Regulation and Determinations

**Angela Medina**
Licensing and Charters Officer

# Essential Regulation for the Transportation Industry

The Agency prides itself on quality service to its regulated stakeholders. In the fast-paced and ever-changing realm of transportation, it is essential for the Agency to be responsive to the current and future needs of the industry.

The Agency's objective in its 2008-2011 Strategic Plan was to continue to focus on the timely issuance of regulatory authorizations requested by transportation service providers.

Within the specific powers assigned to it by legislation, the Agency participates in the economic regulation of modes of transportation under federal jurisdiction, including:

- licensing air carriers and acting as one of Canada's aeronautical authorities;
- determining whether terms and conditions of air travel are just and reasonable;
- approving the adequacy of the protection of advance payments made by charter companies contracting with air carriers;
- setting railway revenue caps for moving western grain;
- setting financial and costing frameworks for certain federally-regulated railways;
- issuing certificates of fitness for federally-regulated railways;

For more on industry regulation and the issuance of determinations, go to www.cta.gc.ca/eng/industry

"I'm Angela and transportation matters to me. I know we've made a difference on those rare occasions when an airline ceases operations and we issue urgent licences to bring travellers home."

"[We] appreciate the treatment and response we get from [the Agency] as a regulator and it reflects on the people there. The Agency has built on their knowledge, and they are truly an asset for regulating this industry in Canada."

Industry client

- setting interswitching rates and establishing the net salvage value of railway lines to facilitate their orderly transfer; and
- determining if Canadian ships are available and suitable to perform services that a resident of Canada has requested be provided by foreign ships in Canadian waters.

The Government of Canada's national transportation policy permits the domestic market to largely self-regulate. However, it also acknowledges that regulation can be required to meet public objectives or in cases where parties are not served by effective competition.

## What we are hearing

The Agency's regulated stakeholders were surveyed as part of the client satisfaction surveys that were conducted in the last two years. The surveys show that air, rail and marine transportation service providers believe that the Agency does an effective and efficient job of regulating their industry. They were also highly satisfied with their day-to-day transactional interactions with Agency staff.

The Agency earned high marks in particular with its air licensing clients. All were satisfied with the overall quality of service provided by the Agency – most clients said they were fully satisfied. In addition, nearly all clients were satisfied with the time taken to respond to their requests and felt that they had been treated fairly.

## Key accomplishments

To improve the effectiveness of its economic regulation, the Agency:

- Worked with domestic and international air carriers to ensure that they:
  - Post their terms and conditions of carriage on their Web site if they sell transportation online; and

  - Have placed signs at their business offices, including at airports, advising passengers that their terms and conditions of carriage are available.
- Ensured that member carriers of the Air Transport Association of America properly reflect in their tariffs an agreement concerning the implementation of the Montreal Convention;
- Implemented a new strategic approach to managing the Revenue Cap program for the transportation of western grain to make it more predictable, efficient and manageable for everyone involved;

"All of the permits, certificates, etc. is run so smoothly – a true partner."

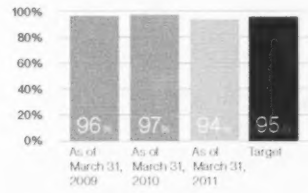
Industry client

### Other key accomplishments since 2008:

- Supported the negotiation of important bilateral air transport agreements, such as an agreement with all 27 European Union member states;
- Accepted tariff filings from Air Canada, Jazz, WestJet and Air Transat reflecting commitments made by these airlines as part of their "Flight Rights" commitments; and
- Launched initiatives to update a number of regulatory frameworks administered by the Agency, on matters such as marine coasting trade, railway interswitching, cost of capital methodology, and airline foreign ownership limits.

## Performance Target

95% of determinations issued within 120 days






- Issued its annual *Guide to Railway Charges for Crossing Maintenance and Construction*, proven to be an effective means of helping parties reach agreement on the apportionment of railway crossing costs; and
- Launched an updated version of its *Guidelines Respecting Coasting Trade Licence Applications* for the use of foreign vessels in Canadian waters.

## Striving for efficiency in essential regulation

The Agency has exceeded or met most of its industry regulation performance targets – this is a significant achievement and strongly supports the effective regulation of the national transportation system.

In the past year, the Agency performed better than in 2009-10 in its issuance of air licence suspensions and charter permit applications. This improvement is due in part to the Agency's introduction of a new process to deal with charter permit applications, allowing for a simplified approval process.

The Agency will continue to document and evaluate its processes to determine where efficiencies can be achieved. To meet this goal, new policies and practices for case officers will also be developed.

# Essential Regulation for Canada's Air Carriers

When it comes to regulating air transportation, the Agency is responsible for:

- issuing licences, authorities and charter permits to Canadian and foreign air carriers offering services to the public;
- enforcing all applicable licensing requirements;
- participating in the negotiation and implementation of international air transport agreements as part of the Government of Canada negotiating team; and
- regulating international air tariffs according to bilateral air transport agreements and Canada's Air Transportation Regulations.

The Agency also ensures consistency with Canadian legislation and regulations, including with respect to:

- air fares;
- rates and charges;
- terms and conditions of carriage; and
- code-sharing, wet leasing and charters.

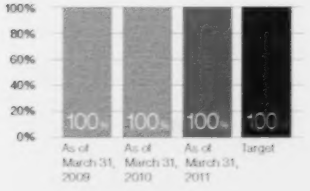
## Making air tariffs available

Under Canadian law, air carriers must have a tariff that covers certain topics. An air carrier's tariff is, in effect, the contract between the service provider and the traveller. When Canadians travel by air, their rights and obligations are governed by this contract.

### Performance Target

**TARGET ACHIEVED**

100% of air carriers' insurance certificate renewals reviewed




For more information on tariffs, go to www.cta.gc.ca/eng/tariffs

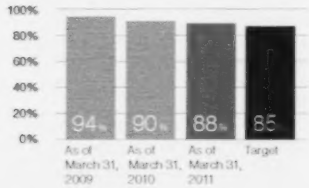
For more information on the Agency's air licensing activities, including an air carrier licence search tool, go to www.cta.gc.ca/eng/licensing

For more information on the regulation of Canada's air transportation sector, go to www.cta.gc.ca/eng/air-industry

## Performance Target

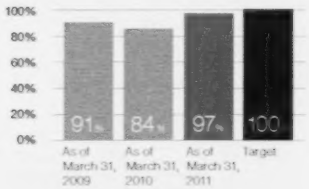
**TARGET ACHIEVED**

85% of licences issued within 14 days of receipt of completed application




## Performance Target

100% of air licence suspension orders issued within 48 hours upon notification of Air Operator Certificate suspension or cancellation, or of invalid insurance




Legislation now requires air carriers to post their tariffs on their Web sites selling their services, as well as have them available to the public at their business offices and post signage to this effect.

The Agency provided sample signage for air carriers, in early 2010, to post in their business areas. The sample signage has been downloaded over 217 times from the Agency's Web site.

Agency follow-up with air carriers has ensured that 100% of Canadian air carriers have now posted their tariff on their Web sites. In addition, 54 foreign carriers have posted signage for tariffs that apply to travel to and from Canada. An additional 15 foreign carriers are currently working with Agency staff to update their tariffs before placing them on their respective Web sites.

### Consultations on updating Canada's Air Transportation Regulations

In 2010-11, the Agency launched a review to update the *Air Transportation Regulations* that govern the implementation of the *Canada Transportation Act*. The Regulations cover such Agency responsibilities as the classification of aircraft and air services, domestic and international licensing and conditions governing how aircraft are provided with flight crew.

The Agency invited stakeholders to submit comments and suggestions – both on proposals developed by the Agency and on related topics of interest to stakeholders. The consultations are being held in three phases, each covering a different section of the Regulations.

The first phase was completed in summer 2010 and the results are expected to be published in early spring 2011. The second phase of consultations is scheduled to begin in summer 2011.

## Licensing

The Agency licenses Canadian applicants to operate air services within Canada, and licenses Canadian and foreign applicants to operate scheduled and non-scheduled international air services to and from Canada.

The Agency processed 1,036 air licensing activities over the course of 2010-11, including applications for new licences, cancellations, suspensions, and reinstatements.

The Agency continues to maintain a licensing regime that ensures that publicly-available air services:

- meet the applicable Canadian air ownership and control requirements;
- have appropriate liability insurance;
- meet certain financial requirements when they start operations, if they are Canadian; and
- hold a Canadian aviation document issued by Transport Canada.

## Financial fitness

In 2010-11, the Agency completed three reviews of the financial fitness of Canadian applicants seeking to offer domestic or international services using aircraft with more than 39 seats.

The purpose was to ensure they had a reasonable chance of success, which minimizes disruptions in service and protects consumers. All three were approved by the Agency.

Of the 132 applications for new licences processed in 2010-11:

| | |
|---|---|
| 5 | were withdrawn; and |
| 127 | resulted in a licence being issued. |

Of these,

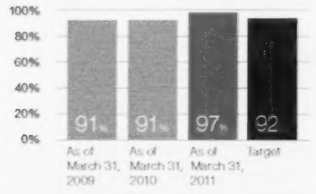
| | |
|---|---|
| 26 | were issued to 5 Canadian applicants for the operation of a scheduled international air service using large aircraft between Canada and a foreign country: |

| Canadian Airline | New licences issued for services between Canada and... |
|---|---|
| Air Transat | Jamaica, the Bahamas, Turkey |
| Air Canada | Angola, Cameroon, Guinea, Ivory Coast, Uganda, Morocco, Tunisia, Burkina Faso, Burundi, Ghana, Ethiopia, Rwanda, Turkey, Sudan, Congo, Senegal, Israel |
| Enerjet | Guyana |
| CanJet | Jamaica, the Bahamas, Cuba |
| Sunwing Airlines | Member States of the European Community, Cuba |

## Performance Target

**TARGET ACHIEVED**

92% of Charter Permits issued within 30 days




## Canadian ownership and control

The Agency reviewed 60 Canadian applicants already operating or proposing to operate domestic or international air services in 2010-11.

Four reviews involved major investigations because the companies had complex ownership structures or there were non-Canadian minority shareholders or business associates who might have exercised control over the applicant.

After verifying that the companies were incorporated in Canada, that at least 75% of their voting interests were owned and controlled by Canadians, and that they were controlled in fact by Canadians, the Agency approved all 60 applications.

## Bilateral air transportation agreements

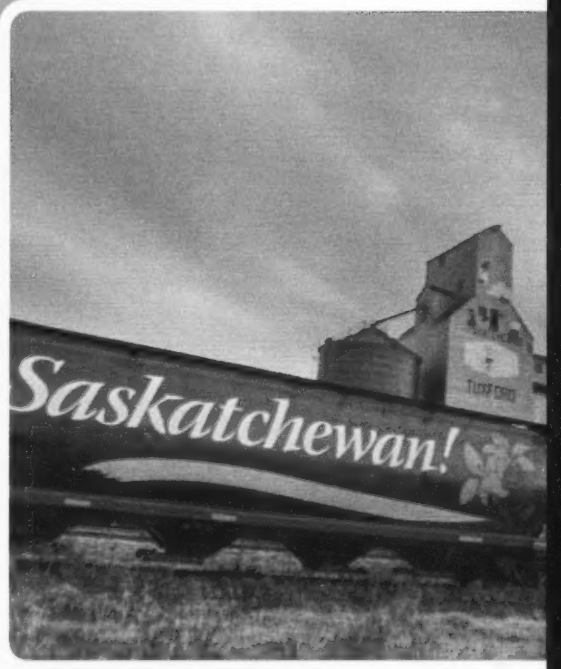
In 2010-11, the Agency participated in six successful negotiations, namely with Jamaica, Switzerland, Trinidad and Tobago, Qatar, Egypt and Brazil.

To learn more about charter permits, go to www.cta.gc.ca/eng/charters

For more information on the Agency's role in bilateral relations, go to www.cta.gc.ca/eng/bilateral

# Essential Regulation for Canada's Rail Carriers

The Agency determines the railway revenue caps for the Canadian Pacific Railway Company (CP) and the Canadian National Railway Company (CN) for the movement of western grain and the regulated railway interswitching rates. It also processes applications for certificates of fitness for the proposed construction and operation of railways, and approvals for railway line construction.




## Western grain

The revenue caps are a form of economic regulation that enables CN and CP to set their own rates for services, provided the total amount collected remains below the ceiling set by the Agency.

It is a complex process that sees the Agency annually consult with grain producers, the Canadian Wheat Board, shipper organizations, railway companies, grain companies, other federal departments, and provincial and municipal governments to set revenue caps. At the end of a year, the Agency must then determine whether or not each cap has been exceeded by the railway company and assess financial penalties based on the amount if a railway goes over the cap.

Over the past year, the Agency introduced a new approach to managing the revenue cap program. This approach, which recognizes the long-standing and established nature of this program, will ensure that it is more predictable, efficient and manageable for all parties involved.

## Increase in revenue cap inflation factor

In April 2010, the Agency announced a seven percent increase in the Volume-Related Composite Price Index– essentially an inflation factor – for CN and CP revenue caps for the movement of western grain. This Decision set the index at 1.1384 for the 2010-11 crop year beginning August 1, 2010.

For a list of federally-regulated railway companies, go to www.cta.gc.ca/eng/rail-industry




## Revenue cap for crop year 2009-10

In December 2010, the Agency announced that the revenues of CN and CP for the movement of western grain had not exceeded their respective revenue caps for crop year 2009-10 – the first year since 2002-03 that both railways have been under their respective caps. CN's grain revenue of $463,919,885 was $3,734,477 below its revenue cap of $467,654,362 while CP's grain revenue of $454,043,873 was $1,681,884 below its cap of $455,725,757.

## Modernizing the rail regulatory regime through consultation

The Agency encourages a transparent and collaborative approach to its operations and welcomes the views of its stakeholders and interested parties on its practices. In 2010-11, the Agency began consultations on the following rail transportation matters:

### *Railway cost of capital methodology*

In fall 2010, an examination of the existing cost of capital methodologies and principles, the Agency's current cost of capital methodology, as well as those used by other economic regulatory bodies was completed by an independent consultant. The consultant's report was released and the Agency is currently holding consultations with interested parties. The consultations will be completed in spring 2011.

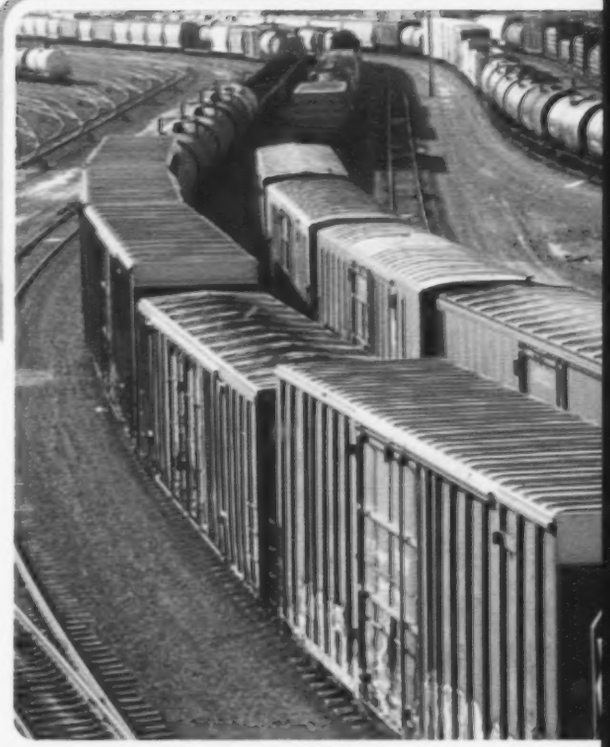
### *Interswitching rates*

The first round of consultations on the Agency's Railway Interswitching Regulations resulted in significant proposed changes to the methodology the Agency uses to determine interswitching costs incurred by the railways. Therefore, in spring 2010, the Agency held a second round of consultations.

The Agency has reviewed the submissions and is now moving forward with an amendment to the regulated interswitching rate.

### *Net salvage value guidelines*

When a railway company seeks to discontinue use of a railway line, the Agency can be called upon to assist in the process by determining the net salvage value of the railway assets. Following earlier changes to the *Canada Transportation Act*, the Agency began work in 2010-11 on guidelines for the determination of net salvage value. Draft guidelines will be distributed to interested parties for consultation in summer 2011.

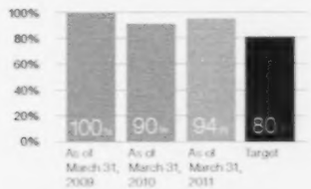


# Essential Regulation for Canada's Marine Industry

## Performance Target

TARGET ACHIEVED

80% of coasting trade applications processed within 90 days (when an offer is made)




For detailed statistics regarding coasting trade applications, go to www.cta.gc.ca/eng/statistics

The Agency is responsible for determining if Canadian ships are suitable and available to operate commercial services in Canadian waters, which may otherwise be provided by foreign or non duty-paid ships upon request by a resident of Canada.

In July 2010, the Agency released an updated version of its *Guidelines Respecting Coasting Trade Licence Applications*. The Guidelines were developed through extensive consultations with stakeholders and interested parties from across the country's marine sector.

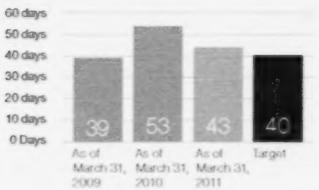


Modifications to the Guidelines clarify:

- The Agency's expectations with respect to the timing of applications and offers;
- The content of submissions to ensure that they contain all relevant facts and circumstances;
- The roles and responsibilities of the applicant, the ship offeror and the Agency throughout the decision-making process;
- The Agency's mandate under the *Coasting Trade Act*; and
- The Agency's administrative process, under which Canadian owners or operators of suitable and available vessels are provided an opportunity to object to applications for the use of foreign vessels in Canadian waters.

## Performance Target

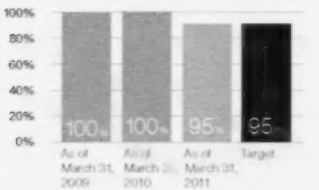
Average of 40 days to complete rulings on coasting trade applications (with offer)




## Performance Target

TARGET ACHIEVED

95% of coasting trade applications processed prior to the commencement date (when no offer is made)





## How We Work at

# Ensuring Compliance

**Simona Sasova**
Manager, Enforcement

# Enforcement

The Agency's enforcement officers ensure compliance among transportation providers subject to the *Canada Transportation Act*, the *Air Transportation Regulations* and the *Personnel Training for the Assistance of Persons with Disabilities Regulations*.

The Agency has generally found Canadian companies extremely co-operative and constructive in finding ways to ensure compliance.

Agency enforcement officers may, however, use their powers to levy fines until compliance is achieved. In very rare cases, the Agency has turned to law enforcement agencies to prosecute offenders when transportation laws have been violated.

## OC Transpo

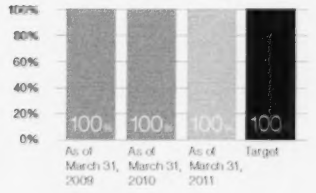
In a 2007 Decision, the Agency found that OC Transpo's failure to call out stops was an undue obstacle to persons with visual impairments. The Agency ordered OC Transpo to comply with its own policy of calling out stops.

In 2008 and again in 2010, enforcement officers found that drivers were still failing to call out stops, and the Agency issued two penalties.

## Performance Target

TARGET ACHIEVED

100% compliance by air licensees with the requirements of the *Canada Transportation Act* and its attendant regulations to hold a valid licence, insurance and Air Operator's Certificate

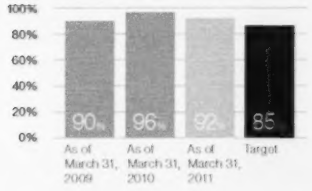



"I'm Simona and transportation matters to me. My team of Enforcement Officers runs inspections to make sure that transportation providers comply with the Agency's regulations and rulings. The program encourages voluntary compliance and we've found that transportation providers are willing to work with us to do the right thing."

## Performance Target

TARGET ACHIEVED

85% of air transportation compliance determinations issued under the Periodic Inspection Program within 120 days




Late in 2010, the public transit operator announced that it would begin phasing in an automated Next-Stop Announcement System (NSAS) on its buses.

The Agency's solution called upon bus operators to consistently call out stops, as set out in OC Transpo's own policy. The Agency recognizes that the NSAS might assist OC Transpo in achieving full compliance, however it is OC Transpo's responsibility to ensure that announcements are made and clearly heard on all its bus routes, with or without an automated stop announcement system.

The City of Ottawa has requested that the Agency modify the corrective measures it issued in order to take into account the installation of the NSAS. The Agency has initiated a review of these measures.

# Monitoring

## Compliance report tracks accessibility of travel information at terminals

In its *Terminal Code Compliance Report*, issued in October 2010, the Agency found that the majority of federally-regulated transportation terminals (airports, railway stations and ferry terminals) were compliant with specific provisions of the *Code of Practice: Passenger Terminal Accessibility*. The Code outlines requirements for the accessibility of transportation terminals for persons with disabilities.

Web sites of terminal operators were examined to identify whether they provide sufficient information regarding different types of services for persons with disabilities. In cases where the required information was not available on the terminal operator's Web site, Agency staff verified whether an equivalent level of information was available via alternatives such as telephone or teletypewriter (TTY).

The Agency continues to work with stakeholders to further enhance the accessibility of Canadian transportation terminals, and to ensure that undue obstacles to the mobility of persons with disabilities are removed from the federally-regulated transportation system.

## Voluntary codes of practice improving air carrier accessibility

In November 2010, the Agency released a compliance report showing that Canada's major air carriers are improving onboard accessibility for persons with disabilities.

The report concerned the status of the *Implementation Guide Regarding Space for Service Dogs* and the *Implementation Guide Regarding Tactile Row Markers*

In 2010-11, Agency enforcement staff undertook 139 inspections, and initiated 41 investigations.

Of these,

- 42 resulted in informal warnings;
- 6 resulted in formal warnings; and;
- 11 notices of violation were issued.

For detailed statistics on enforcement, go to www.cta.gc.ca/eng/statistics

To learn more about the Codes of Practice for transportation service providers, go to www.cta.gc.ca/eng/codes-of-practice

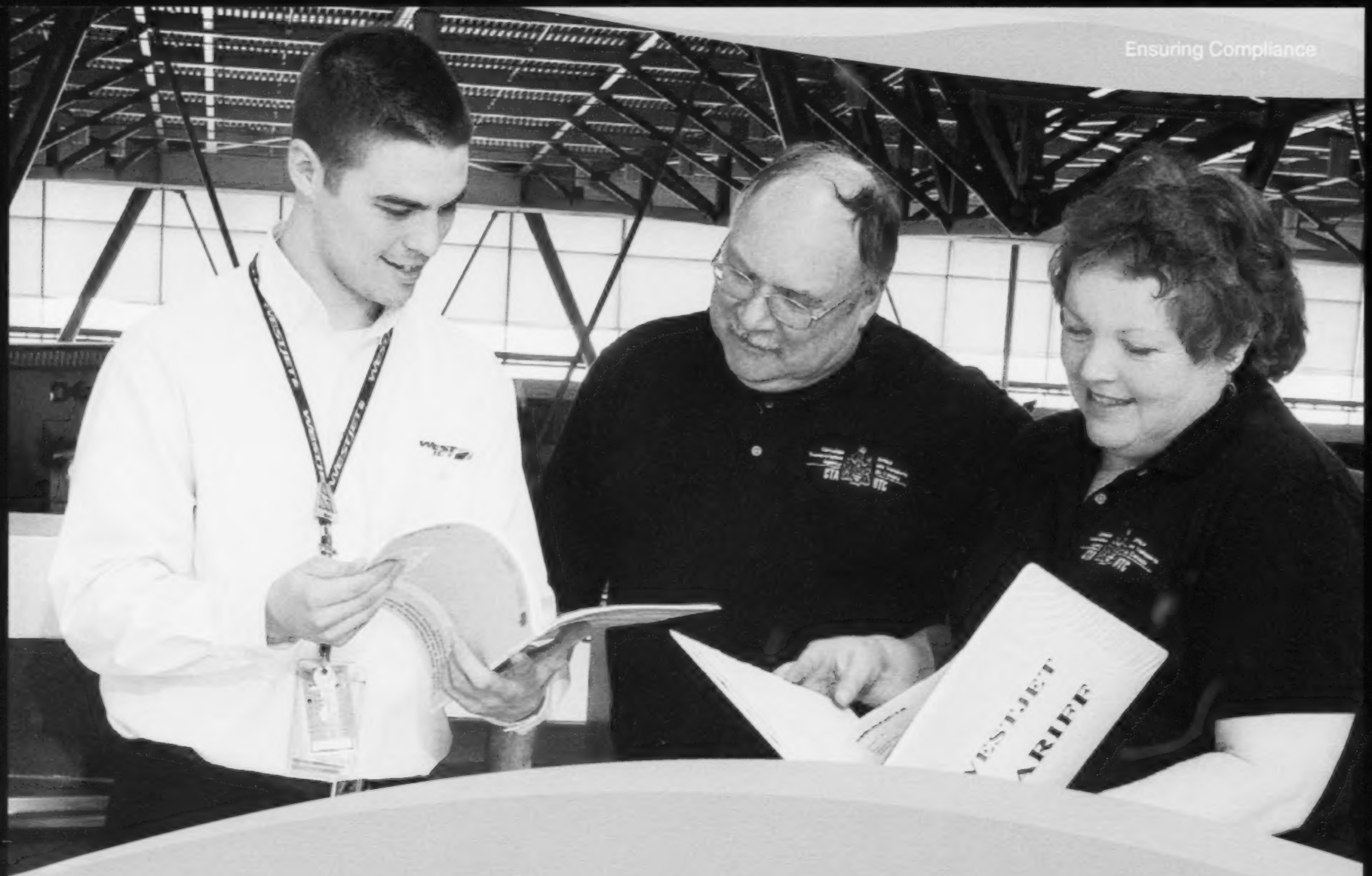
For more on the Agency's enforcement activities, go to www.cta.gc.ca/eng/enforcement

For the full compliance reports, go to www.cta.gc.ca/eng/compliance

*Onboard Large Aircraft*. The implementation guides provide detailed, practical information for accommodating persons with disabilities and should be read in conjunction with the Agency's voluntary *Code of Practice: Aircraft Accessibility for Persons with Disabilities* (Air Code).

The report indicated that the country's six largest airlines, representing over 80 per cent of air passenger traffic in Canada, have made significant progress in complying with the Guides. The Agency is working with non-compliant carriers as well as with other stakeholders to ensure that the provisions of the Air Code are met, and to continue to enhance the accessibility of the federally-regulated transportation network.

The *Implementation Guide Regarding Space for Service Dogs* and the *Implementation Guide Regarding Tactile Row Markers Onboard Large Aircraft* are new additions to the Agency's voluntary *Code of Practice: Aircraft Accessibility for Persons with Disabilities*. They provide detailed, practical information for accommodating persons with disabilities.



The Agency's enforcement officers ensure compliance among transportation providers subject to the *Canada Transportation Act*, the *Air Transportation Regulations* and the *Personnel Training for the Assistance of Persons with Disabilities Regulations*.



# Assessment of the Act

The *Canada Transportation Act* is the Agency's enabling statute to implement prescribed economic elements of the federal government's transportation policies.

To ensure effective administration of its enabling legislation, the Agency monitors all aspects of the operation of this Act on an ongoing basis. The Act requires the Agency to assess the operation of, and any difficulties observed in, the administration of this Act and to report its findings to Parliament through its Annual Report.

## Ongoing monitoring of the *Canada Transportation Act*

The following table provides the Agency's assessment of the operation of this Act based on activities of the Agency, including applications before it and its findings on them. Specifically, it highlights the difficulties observed by the Agency in the administration of this Act and provides its views on possible approaches to address these issues for consideration of Parliament. Several of these difficulties have previously been included in the Agency's annual reports to Parliament.

The Agency's regulations, codes of practice and guidelines are the principal instruments by which the provisions of the Act are applied in the everyday context of the federal transportation sector. However, while regulations can support the functioning of efficient, fair markets, they can also prove unduly burdensome if poorly designed or implemented. In addition to its ongoing responsibility to monitor the Act, the Agency, guided by the *Cabinet Directive on Streamlining Regulation*, also engages in ongoing assessments of its regulatory regime to ensure that it is streamlined and reflective of the evolution of government policy, the transportation industry and Agency practices. Several consultations have already been undertaken in this regard, which have been noted in this Annual Report.



The Agency's regulations, codes of practice and guidelines are the principal instruments by which the provisions of the Act are applied in the everyday context of the federal transportation sector.

## Rail Transportation

| Topic | Description | Assessment |
|---|---|---|
| **Railway line transfers and discontinuances** | The Agency and the Federal Court of Appeal have rendered significant decisions concerning the determination of the net salvage value (NSV) of rail lines.<br><br>In a judgment of the Federal Court of Appeal regarding a Decision of the Agency (Decision No. 383-R-2007) under subsection 144 (3.1) of the Act, the Court clarified jurisprudence on NSV determinations by ruling that Division V of the Act is a complete code and operates according to definite timelines that cannot be modified by the Agency. | The Agency has no discretion to modify the timeline established for the completion of the discontinuance and abandonment process, and, in particular, within the 6-month period foreseen under subsection 144(4) of the Act. Accordingly, it is likely that the Agency will encounter difficulties completing the NSV of rail lines under this subsection within the timelines prescribed in the Act when there are difficult issues to be resolved, such as the assessment of environmental remediation costs or when winter weather conditions prevent the inspection of a railway line to assess track conditions. This may, in some cases, prevent the Agency from rendering the services it has been instructed by Parliament to provide to the parties involved.<br><br>Parliament may wish to consider whether there are exceptional circumstances under which the Agency should be allowed to extend the timelines set in Division V of the Act to meet the intent of legislation and ensure the application of procedural fairness. |

| Topic | Description | Assessment |
|---|---|---|
| **Power to order parties to produce reports at their cost** | Sections 144 to 146 of the Act require the Agency to provide a service to determine net salvage value. However, there is no explicit legislative requirement for parties involved to undertake studies in order to provide necessary information for the Agency to make an informed and full determination.<br><br>Such studies may involve evaluations, environmental assessments or technical reports. While the Agency may request such information, and has the legislative authority to ensure it is reimbursed for its costs by the applicant under subsections 144(3.1) and 146.3(1), there is no clear requirement on the part of the parties under subsections 145(5) or 146.2(7) to pay for the costs of studies requested by the Agency to support its decision-making process. The costs associated can be substantial. The Agency, however, is still expected to make a determination with or without this information. In an ongoing case, as a result of having to request a study deemed necessary to make decisions and to facilitate agreement to provide such costly studies, the Agency created new procedures to allocate costs for studies among parties. While successful in that particular situation, there is still no clear obligation on the part of the parties to provide the information required by the Agency, nor to cover the costs in the case of determinations under subsections 145(5) or 146.2(7) of the Act. | A modification to the Act could serve to clarify that the Agency can order a party or parties to produce necessary studies at their cost (and to determine the apportionment of costs between the parties where appropriate), or to reimburse costs incurred by the Agency to obtain the necessary studies. |

| Topic | Description | Assessment |
|---|---|---|
| **Shipper complaints** | Upon a shipper's complaint, pursuant to section 120.1 of the Act, the Agency can investigate unreasonable charges or terms and conditions for the movement of traffic or provision of incidental services contained in a tariff that is applicable to more than one shipper. If found to be unreasonable, the Agency can order changes to certain charges and conditions for the movement of traffic or provision of incidental services. | The Agency has only had three complaints to date under this new provision.<br><br>One related to fuel surcharges and was dismissed by the Agency in 2008-09 on the basis that the carriage of traffic in question was covered by the terms and conditions of a confidential contract between the parties, which included fuel surcharges set out in a tariff that was incorporated by reference into the contract. The Agency found that parties are bound by the contracts which they enter into and agree to for their mutual benefit and as such, that the Agency had no jurisdiction to change the terms of a contract between parties on application under this section of the Act.<br><br>Concerns by certain shipper groups were subsequently expressed to the Agency that this ruling has severely limited the recourse Parliament intended to be available to shippers against unreasonable charges and associated terms and conditions, as confidential contracts include a term which, by reference, incorporates all of the railway's tariffs.<br><br>In 2010-2011, Governor in Council confirmed that the Agency does have the jurisdiction to consider shipper complaints under section 120.1, whether or not a related tariff provision is contained in a confidential contract between parties. This Decision is currently under Judicial Review. |

## Air Transportation

| Topic | Description | Assessment |
|---|---|---|
| **Authority to investigate and suspend unreasonable domestic tariff provisions** | Sections 67.1 and 67.2 limit the Agency's authority to cases where a complaint has been received, thereby limiting the Agency's ability to conduct investigations concerning a carrier's adherence to its domestic tariff and the reasonableness of a carrier's terms and conditions of domestic carriage.<br><br>There are no similar complaint-driven constraints in respect of international tariffs.<br><br>This means that a decision requiring a carrier to change its international tariff because it has been determined to be unreasonable cannot be extended to the equivalent domestic tariff unless there has been a specific complaint about the domestic tariff. However, should the Agency find a domestic tariff provision unreasonable, it can order changes to be made to a carrier's domestic tariff while also ensuring these are reflected in the carrier's international tariff.<br><br>Subsection 67.2(1) of the Act allows the Agency to suspend a domestic tariff against which a complaint has been filed, but only after the Agency has first determined that the tariff is unreasonable. This differs from the international regime where the Agency has the ability to suspend an international tariff pending the results of its investigation and decision on the matter.<br><br>Over the years, the Agency has received several complaints that relate concurrently to both domestic and international carriage, and has suspended the international condition at issue pending investigation, while the domestic condition remains in effect. This situation tends to create confusion for consumers. | The inability of the Agency to take action on its own motion regarding domestic tariffs can result in unequal treatment between domestic and international air travellers and increases the complexity of compliance for industry. It can also create confusion for passengers when dealing with the same air carrier, since different rules may apply for domestic and international legs of a flight.<br><br>A potential solution to avoid such confusion would be to allow the Agency to broaden its review to include the domestic tariff when investigating an international tariff provision, whether the investigation is of its own initiative or as a result of a consumer complaint. This could provide consistency in approach and eliminate situations where the Agency has found an international tariff to be unreasonable, but can take no action against the same provision domestically with the same carrier.<br><br>Allowing the Agency to also suspend a potentially unreasonable domestic tariff provision pending its determination, in cases when it has taken similar action for the same international tariff provision, could also potentially eliminate an inconsistency that can confuse consumers. |

| Topic | Description | Assessment |
|---|---|---|
| **Authority to address systemic issues related to international tariffs** | The Convention for the Unification of Certain Rules for International Carriage by Air (Montreal Convention) amended important provisions of the Warsaw Convention relating to compensation for losses during the international carriage of persons, baggage and cargo. It came into force in 2003, and has been incorporated into domestic law by the *Carriage by Air Act*.<br><br>A number of actions have been taken by the Agency to encourage air carriers to incorporate the terms and conditions of the Montreal Convention into their tariffs. Nonetheless, a significant number of carriers have still not done so.<br><br>In exercising its jurisdiction as the Canadian aeronautical authority to address the issue of non-compliance with the Montreal Convention, the Agency can act on its own motion as it deals with an international tariff. However, such matters must currently be addressed on a carrier-by-carrier basis.<br><br>To obtain consistency, based on existing legislation, Agency staff have begun to launch processes with each and every carrier individually. The Agency regulates hundreds of carriers operating international air services and tariffs typically contain many pages of legal text addressing liability matters. | The legal framework governing the Agency's activities in respect of air transportation requires that tariffs be just and reasonable, and to be such, tariffs must comply with Canadian law, both domestically and internationally.<br><br>While progress in ensuring compliance is being made, allowing the Agency to address systemic issues of non-compliance with international conventions and Canadian law on a systemic basis would provide the Agency with additional leverage and methods to compel all non-compliant carriers to comply.<br><br>One approach to dealing with this issue may be to provide the Agency with the power to substitute or suspend terms and conditions of air carriage for all, or a group of, carriers and allow the Agency to issue an order applying to all air carriers to implement tariffs consistent with Canadian law and international conventions signed by Canada. Such an order, if disregarded by those carriers not in compliance with Canadian law, could be enforced by administrative monetary penalties.<br><br>It is the Agency's view that such an approach, while ensuring fairness among carriers, would also enable more efficient and effective enforcement of Canadian law. |

## Accessible Transportation

| Topic | Description | Assessment |
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| **Investigation of systemic accessible transportation matters** | Subsection 172(1) of the Act allows the Agency to investigate accessible transportation matters which are brought before it only upon complaint. The Agency's investigation is limited to the issues raised by the applicant against a particular carrier or terminal operator.<br><br>While individual issues are effectively resolved through the complaint adjudication process, the following systemic issues are problematic:<br><br>• Undue obstacles related to industry-wide policies or practices may only be resolved with the service provider named in the complaint. Persons with disabilities may continue to encounter the same undue obstacles with other service providers.<br><br>• Decisions placing requirements to remove undue obstacles to accessibility on only one or some service providers can create significant competitive cost and/or operational disadvantages among providers.<br><br>• Individual parties to complaints often do not fully and effectively represent the interests of other affected parties. This cannot be effectively addressed unless other affected parties intervene. However, their participation and the extent of involvement are at their discretion. Therefore, complaints that may have ramifications for an entire industry may not have the benefit of a broader investigation that brings forward all the issues and interests.<br><br>Examples of past systemic issues brought forward on complaint include the one-person-one-fare policy and the provision of oxygen on board aircraft and, more recently, matters related to the carriage of passengers with allergies aboard aircraft.<br><br>As well, a complaint may be filed against a carrier's policies which may have a broad public interest component, but due to the nature of the complaint, the Agency is limited as to what it can investigate. | Parliament may wish to consider a legislative amendment giving the Agency the power to expand the scope of a case in order to investigate issues raised in a complaint on an industry-wide basis, when this is determined to be appropriate. Such an amendment could enable the Agency to more effectively review issues that have broad implications for stakeholders, while not necessarily placing individual transportation service providers at an unfair competitive disadvantage. It would also allow the Agency to stay an application that has ramifications for an entire sector while it completes a thorough investigation.<br><br>Having the flexibility to investigate known broader issues at the beginning of a process rather than having to wait for further complaints would allow for greater efficiency.<br><br>To preserve the integrity of accessibility review, including undue hardship analysis, any orders issued by the Agency would be applied on an individual service provider basis. This would only be done after ensuring interests are fully considered and weighed and after taking into consideration the operational and economic circumstances of each of the individual service providers.<br><br>The current jurisdiction of the Agency limits its ability to expand the scope of its investigation into accessibility issues when it is appropriate to do so, thereby placing limits on the Agency's ability to act effectively and consistently. |

| Topic | Description | Assessment |
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| **Jurisdictional overlap with the *Canadian Human Rights Act*** | The Canadian Transportation Agency, the Canadian Human Rights Commission (CHRC) and the Canadian Human Rights Tribunal (CHRT) have the power under their respective legislation to address complaints by persons with disabilities regarding the accessibility of the federal transportation system.<br><br>Sections 170 and 172 of the *Canada Transportation Act* explicitly set out the mandate of the Agency to ensure that undue obstacles to the mobility of persons, including persons with disabilities, are removed from federally-regulated transportation services and facilities.<br><br>In 2007, the Supreme Court of Canada confirmed that Part V of the *Canada Transportation Act* is human rights legislation and that the principles of the *Canadian Human Rights Act* must be applied by the Agency when it identifies and remedies undue obstacles. The Supreme Court also acknowledged that the Agency uniquely has the specialized expertise to balance the requirements of persons with disabilities with the practical realities – financial, structural and logistic – of the federal transportation system.<br><br>Section 171 of the Act requires the Agency and the CHRC to coordinate their activities in order to avoid jurisdictional conflict, and a memorandum of understanding designed to achieve this was entered into between the Agency and the CHRC. Despite this, the CHRT issued a Decision which dealt with the same complainant and identical issues while arriving at a different decision from one previously made by the Agency. In this case, the jurisdictional overlap resulted in a conflicting outcome.<br><br>The CHRT Decision could have significant jurisdictional implications for future transportation-related accessibility complaint applications. | This jurisdictional overlap can lead to the following problems:<br><br>• Complainants face uncertainty as to which body should address their complaints, particularly given the different remedies available under the *Canada Transportation Act* and the *Canadian Human Rights Act*. Although the Agency has the mandate to remove undue obstacles from the federal transportation network, it does not have the power to award compensation for pain and suffering, unlike the CHRT.<br><br>• Respondents (e.g., carriers, terminal operators) face the possibility that they will have to defend the same issues under two different legislative regimes.<br><br>• To the extent that both the Agency and the CHRC/CHRT deal with the same complaint, there is uncertainty and added costs for the respondent and the Government of Canada.<br><br>At the request of the Agency, the Federal Court undertook a judicial review on these jurisdictional issues at the end of 2009-10. In October 2010, the Federal Court overturned the CHRT's Decision, affirming the jurisdiction of the Agency as the principal expert tribunal in all transportation matters, including those related to accessibility.<br><br>The Federal Court ruling has been appealed by the CHRT. The Agency will report further on this issue once the appeal has been heard.<br><br>To clarify jurisdictional boundaries between the Agency and the CHRC/CHRT, the *Canada Transportation Act* could be amended to confirm the Agency's exclusive mandate with respect to dealing with complaints by persons with disabilities regarding the accessibility of the national transportation network. |

## General

| Topic | Description | Assessment |
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| **Clarification of the Agency's two main business functions** | The Canadian Transportation Agency is an independent body of the Government of Canada which currently performs two key functions within the federal transportation system.<br>• As a quasi-judicial tribunal, the Agency, informally and through formal adjudication, resolves a range of commercial and consumer transportation-related disputes, including accessibility issues for persons with disabilities. It operates like a court when adjudicating disputes.<br>• As an economic regulator, the Agency makes determinations and issues authorities, licences and permits to transportation carriers under federal jurisdiction.<br>In its role as an economic regulator, some of the Agency's decisions – including many pertaining to charter permits or licensing activities – have effectively become routine and involve little or no discretion. The delivery of such routine, non-discretionary regulatory services could be dealt with more effectively by staff.<br>However, there are no provisions for such a delegation of authority to staff in the *Canada Transportation Act*.<br>Currently, the Act:<br>• Provides limited guidance regarding the role of Members or the Chair/Chief Executive Officer (Chair/CEO);<br>• Requires Members to make all Agency decisions; and<br>• Makes no distinction between the adjudicative and regulatory provisions administered by the Agency. | In the Agency's opinion, when the Act is next reviewed consideration should be given to clarifying:<br>• The authority of the Chair/CEO over the administration of economic regulations involving non-discretionary or routine decisions and powers of delegation in that respect; and<br>• The two distinct functions of the Agency and the procedural expectations vis-à-vis each function.<br>These changes would:<br>• Allow Members to concentrate on their core role as adjudicators;<br>• Help distinguish between the responsibilities carried out by the Agency as an administrative public service organization and those borne by its Members as a tribunal; and<br>• Provide for the efficient, effective and timely administration of the routine and regulatory matters within the purview of the Agency. |

| Topic | Description | Assessment |
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| **120-day deadline** | Subsection 29(1) of the Act states that the Agency will make its decision in any proceeding before it as expeditiously as possible, but no later than 120 days after the originating documents are received, unless the parties involved agree otherwise.<br><br>The Agency has set in place high performance standards. With a view to ensuring transparent, fair and efficient regulation of Canada's transportation system, the Agency implemented a new Performance Measurement Framework in 2007. This framework was amended in late 2010-11 to support the Agency's next three-year Strategic Plan (2011-2014).<br><br>Performance indicators specific to, and based on benchmarks for, different areas of its service delivery have since been implemented and reported on in its Annual Report. For example, in 2010-11, the Agency exceeded its performance targets related to air licensing and charters by issuing 88 percent of all air licences within 14 days and 97 percent of all charter permits within 30 days. On the other hand, the resolution of complex dispute cases can require, and in certain cases has required, more than 120 days. | The Agency has adopted a series of service-specific, time-related performance measures which are more effective for overall Agency accountability than the single maximum 120-day legislated timeframe for all proceedings before the Agency. In all cases, these measures are based on time-related targets of less than 120 days. The transportation industry has been informed of these targets and the Agency reports to Parliament on its performance against them.<br><br>These performance measures and processes are relevant to the nature of each business activity and have been designed to ensure that the Agency's services are provided in an efficient, transparent and client service-oriented manner. Performance results are published in the Agency's Annual Report to Parliament and on its Web site for clients and stakeholders.<br><br>Such results-focussed performance indicators establish benchmarks and determine the level of service delivery the Agency needs to achieve to help maintain an efficient federal transportation system. They allow the Agency to track how closely its objectives are being met and to implement continuous improvements to enable it to meet the accountability expectations of Parliament and Canadians.<br><br>In light of the fact that subsection 29(1) of the Act already requires the Agency to act as expeditiously as possible, and as the Federal Court has ruled that the 120-day legislated timeframe is not mandatory, the Agency recommends the removal of this 120-day deadline and that, in its place, the Agency be required to establish service-specific, time-related performance measures. These measures would continue to be reported on annually in the Agency's Annual Report to Parliament.<br><br>This proposed change would contribute to better managing expectations by recognizing that in all instances the Agency aims to issue its decisions in less than 120 days, while acknowledging that this is not possible in certain circumstances. |

| Topic | Description | Assessment |
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| **Improving annual reporting to Parliament** | Subsection 42(1) of the Act requires the Agency's Annual Report to be submitted to the Governor in Council by the end of May, two months following the close of the fiscal year ending March 31.<br><br>The Agency's Departmental Performance Report is only required to be filed by the end of July, four months following the close of the fiscal year ending March 31. | Allowing the Agency to submit its Annual Report by the end of July, rather than the end of May, would:<br>• Provide the Agency with a more reasonable time frame to finalize March 31 year-end data;<br>• Strengthen the linkages between the Annual Report and the Agency's Departmental Performance Report and Report on Plans and Priorities; and<br>• Create greater efficiency for the Agency to meet all of its reporting requirements to Parliament within its resource allocation. |

# Appendix



To access the full list of statistical tables, go to www.cta.gc.ca/eng/statistics

## Annual Report 2010-11: List of statistical tables available on Agency Web site

**I. Agency Rulings**
Total rulings by Members

**II. Dispute Resolution**
Disputes resolved by the Agency

**III. Air Travel Complaints**
Air travel complaints – informal facilitation
Air travel complaints in the facilitation process (Canadian carriers)
Air travel complaints in the facilitation process (foreign carriers)
Issues cited in air travel complaints in the facilitation process (all carriers)
Issues cited in air travel complaints in the facilitation process (major Canadian carriers)

**IV. Air Licensing and Charters**
Air carriers by nationality
Air licences held by nationality
Air licensing activities
Charter permits issued
Charter flight notifications

**V. Rail Transportation**
Railway infrastructure and construction

**VI. Marine Transportation**
Coasting trade applications

**VII. Enforcement**
Enforcement activities